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DEFENSE PROCUREMENT CONFLICT OF INTEREST ACT

ORIGINAL

HEARING

BEFORE THE

SUBCOMMITTEE ON HUMAN RESOURCES

OF THE

COMMITTEE ON POST OFFICE AND CIVIL SERVICE HOUSE OF REPRESENTATIVES

NINETY-NINTH CONGRESS

SECOND SESSION

COMPLETED

ON

H.R. 2554

A BILL TO LIMIT CONFLICTS OF INTEREST IN DEFENSE PROCUREMENT

FEBRUARY 26, 1986

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DEFENSE PROCUREMENT CONFLICT OF INTEREST ACT

WEDNESDAY, FEBRUARY 26, 1986

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON HUMAN RESOURCES,
COMMITTEE ON POST OFFICE
AND CIVIL SERVICE,
Washington, DC.

The subcommittee met, pursuant to call, at 11 a.m., in room 311, Cannon House Office Building, Hon. Gary L. Ackerman (chairman of the subcommittee) presiding.

Mr. ACKERMAN. The subcommittee is called to order.

Today the Subcommittee on Human Resources will receive testimony on H.R. 2554, the Defense Procurement Conflict of Interest Act, which has been reported by the Armed Services Committee. Our committee has until March 15 to decide whether we should make any changes in this proposal.

H.R. 2554 attempts to deal with the so-called revolving door at the Pentagon. The measure would prohibit for 2 years a former Defense Department employee, military or civilian, from taking a job with a defense contractor if that person had significant procurement responsibilities involving that contractor during the 2 years prior to separation from service.

We have all heard glaring examples of the revolving door. Some of them include the following:

The Pentagon's top procurement official who wrote dozens of defense contractors seeking commitments for a consulting business that she planned to establish. Those letters even listed her office phone number for return calls.

The Assistant Secretary of the Navy in charge of shipbuilding who negotiated a controversial $500 million settlement with a shipbuilder and immediately became executive vice president of that company.

Four high-ranking Army officials responsible for the $4.5 billion DIVAD anti-aircraft gun who retired and took positions with its manufacturer.

But these are only the cases which catch the public's attention. According to the General Accounting Office, for fiscal year 1983 more than 3,000 Pentagon officials, military and civilian, reported taking positions with defense contractors.

Under present law, such individuals are supposed to report their defense-related employment. But also according to GAO, only about

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30 percent complied with that law. Therefore, the total who went through the revolving door is probably over 10,000 people.

It may be that none of those individuals broke any laws. Yet our concern must not only be for actual conflicts of interest but also for apparent conflicts. In a democracy, the perception of impropriety can damage the Government's integrity just as much as actual impropriety. That is why Executive Order 11222 signed by President Johnson in 1965 requires all Federal employees to avoid any actions "which might result in or create the appearance of" a conflict between private interest and public duty.

H.R. 2554 raises many complex issues. How effective are the present laws which already place a number of restrictions on postemployment activities of Federal employees? The Defense Department's Inspector General testified last month before the Judiciary Committee that "not a single case against a [Defense] employee involving post-Government service has been successfully prosecuted."

Should we conclude, therefore, that the present laws are working and the revolving door is not a problem, or should we conclude that present laws are ineffective or being poorly administered?

Another issue we must consider is whether new restrictions on Federal employees would hinder recruitment into Federal service or hurt the morale of Federal employees. Or is morale already hurt when civilian or military personnel see their supervisors go through the revolving door and show up across the table representing the contractor?

We must also consider whether new postemployment restrictions should apply only to employees of the Defense Department. The Pentagon will spend $75 billion for procurement during this fiscal year, more than any other agency. But other agencies, such as the General Services Administration and NASA, have major procurement programs. In fairness, should not new restrictions apply government-wide?

Today we will hear from the chief sponsors of H.R. 2554, Representatives Charles Bennett and Barbara Boxer. We will then hear from David Martin, Director of the Office of Government Ethics, and Kathleen Buck, Assistant General Counsel for the Department of Defense.

We will also hear from Hugh Witt, spokesman for the Aerospace Industries Association. Ann McBride, the senior vice president of Common Cause, who was scheduled to testify today, had to cancel because of illness, and, without objection, her statement will be made part of the hearing record.

I am very pleased to announce that our first witness for today's hearing will be Congressman Bennett, who was the original sponsor of the measure.

I should point out that Congressman Bennett has been crusading for reform of this nature since the early 1950's, and he has some very strong objections to the amendments that were made to the bill by the Armed Services Committee.

Congressman, we are delighted to have you and your expertise, and we thank you for your "stick-to-itiveness" in this matter.

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STATEMENT OF HON. CHARLES M. BENNETT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. BENNETT. Thank you, Mr. Chairman.

I have a longer statement which I will submit for the record, and I have a short one here.

Mr. ACKERMAN. Without objection, it is so ordered.

Mr. BENNETT. Mr. Chairman and members of the committee, thank you for allowing me to be here to speak on this serious problem of the revolving door.

I am not in favor of the bill that you now have before you. That bill is an amended version of the Bennett-Boxer bill. The House soundly defeated the bill before you when it was offered as an amendment to the Defense Authorization Act last year. The House instead attached our original revolving door language to the DOD Act by an overwhelming vote of 397 to 19.

The House/Senate conference produced a law that now prevents some officers and civilian officials of the Department of Defense from going through the revolving door, but further legislation is needed. In order to get that conference out, there was a very great compromise involved, even greater than the measure which the House Committee approved.

The original bill is very clear and direct. It prohibits anyone with significant responsibility for a defense contract from immediately going to work for a firm involved with that contract that he had something to do with. Employees who have dealt with the contractor during the last 2 years of Government service are barred from going to work for that contractor for 2 years after leaving the Government. Anyone violating this ban would be subject to 1 year in jail to a $10,000 fine. Contractors would be subject to the same criminal penalties and would also be liable for contract damages of at least $100,000 if they hired someone in violation of this ban.

I am pleased to tell you that one of this country's largest defense contractors, a firm that has been stung by several well publicized instances of conflict of interest, is acting on its own to draft company policies along the lines of the revolving door bill. Officials from General Dynamics have consulted with me last week about company policies and stated that they are considering a policy which would instruct company officials not to hire anyone from the Department of Defense who has been significantly involved with a company contract in the previous 2 years.

I am very pleased that General Dynamics has taken this initiative. They have told me that they recognize the revolving door publicity has created a serious problem for the defense industry, and they are concerned that whatever policy they adopt not be too far out in front of industry practice. For that reason, they believe it is in their own best interests for Congress to enact revolving door legislation. I agree with that, and I very much appreciate their initiative in taking this action on their own part.

The Government Accounting Office has given the figures that you mentioned, estimating about 13,000 officials have left the Defense Department during 1983, and at least 3,000, or 22 percent, went to work for defense contractors.

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Originally we drafted this bill just from the defense aspect because that is where most of the problem has been, and it did not involve us in possibilities of some committee's delaying action. I am glad to see you are not delaying action on it.

One hundred and seventy general officers left DOD during 1983. At least 92, or 54 percent, went to work for defense contractors. Many of these individuals were intimately involved in testing, auditing, managing, and so forth, and you have talked about DIVAD and some of the other problems we have had there.

Not all of these individuals who left DOD for work defense contractors are in conflict-of-interest situations. We do not know how many conflict-of-interest situations exist because it is very difficult, if not impossible, to collect the necessary information, because the law is not now being enforced.

The reporting requirement in H.R. 2554, both the original bill and the bill as amended in the Armed Services Committee, would correct this situation. Major contractors would be required to annually report the names of recent employees who have come over from procurement positions within DOD. Before such provision, the Secretary of Defense would be required to review each report for accuracy and completeness.

A little bit about the history of this bill. In April 1985 we held joint hearings on the revolving door issue before the Seapower Subcommittee Investigations Subcommittee chaired by Congressman Bill Nichols. On May 6, I introduced on behalf of myself and Mrs. Boxer, who is here with me today, and Mr. Nichols, H.R. 2554, the Defense Procurement Conflict of Interest Act.

Our bill combined the best features of my original bill and that of Mrs. Boxer on this issue. Her activity has been very outstanding. It has almost 50 cosponsors and was passed by the House Armed Services Committee this June, but unfortunately with weakening and objectionable amendments.

The bill you are considering today is that amended version. As I mentioned, the House, by its action on the Defense Authorization Act of 1986, overwhelmingly endorsed the language of the original bill rather than the weaker version coming from the committee.

After lengthy debate, the House voted, 272 to 141, to accept the original bill over the committee version. Then, by a vote of 397 to 19, the House attached the original language. I might point out that judging by the House vote on the original bill, it would pass this subcommittee approximately 5 to 0.

Specific objections to H.R. 2554. In the version you have before you today, high level officials are excluded from coverage by section (g). It exempts high-level officials in two ways: first, by definition. Only positions on a list provided by the Secretary of Defense would be covered. This could not include positions with responsibility for more than one weapon or if the primary duty is not procurement. Thus, many key positions would be exempted just by the position.

Second, by waiver. The Secretary of Defense may also exempt certain officials on the ground that it hampers DOD ability to recruit industry executives. I think that is a specious argument. Some of the finest men we have had in the Department of Defense have come from industry and done an excellent job. Some of them

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have returned and have waited to return or have excluded themselves from contracts which would involve their returning any deleterious matter.

In addition, section (a) was amended by the committee to narrow the coverage of the bill to only those positions identified by the Secretary of Defense and only those contractors included in a notice given to an official upon separation from government service. So it is very much structured in a way which is not going to bring about very much reform.

Why is it important to include high-level officials in the coverage of the bill?

First, the standards of conduct of any organization are set by the leaders. If the leaders engage repeatedly in questionable, unethical, or illegal activity, then it is likely that their subordinates will do the same thing, regardless of regulations on the books.

Second, the American people must be assured the decisions involving billions of dollars and the lives of thousands of service personnel are made as objectively and as honestly as possible. This is very important for those high-level officials with highest public visibility. The public must have faith in the management of the defense budget if we are to retain the existing national support for a strong defense, especially when confronted with mounting Federal deficits.

It is unfortunate that some people have chosen to approach this legislation from the point of view of career interests of procurement officials rather than the national interests of the United States. We have been able to do that about anything else in the Government, and I do not see why we should select this particular area to be so treated.

While many members of the armed services and officials involved in the procurement process have welcomed legislation such as this, the official view of the Department of Defense as stated by Mr. Chapman Cox is, "The public has been well protected against the potential influences of conflicting public and private interests by the Ethics in Government Act of 1978."

That certainly is not a statement that is borne out by the fact. Yet Government studies show witness testimony and investigative reporting have established overwhelming evidence that serious conflict-of-interest problems exist, that they have not been properly addressed by current law, and that they contribute to the decreasing quality and increasing cost of some of our important weapons systems.

I must say, for a person like myself and Mrs. Boxer who do want to have a strong national defense, it is very difficult to have a strong national defense when things like this arise, because it is difficult to have much sympathy for the procurement of things for national defense when some of the procurement has been sour.

Because the existing regulations are inadequate and because they have been infrequently enforced, I introduced the Defense Procurement Conflict of Interest Act and then reintroduced it with Mrs. Boxer, who had very fine suggestions toward improving it. I hope you will approve the bill in its original form, amending the measure before you to do that.

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I would be very grateful for any suggestions this committee would care to offer on the legislation. We will offer the original bill again as an amendment to the fiscal year 1987 Defense Authorization Act, if need be. I will also continue my efforts to make sure that the correct interpretation is given to the language in the Defense Authorization Act of 1986, which is a very limited bill, but it was much broader than the media interpreted. It does apply to thousands of people, not just a few score.

Mr. Chairman, I appreciate this opportunity to discuss these matters with the committee, and I welcome any action your committee might undertake in this area. I strongly hope that you may be able to take the original bill that passed so overwhelmingly on the floor of the House because it is a good bill.

One other committee has addressed this question, of another ilk, and it has approached the matter is a very negative manner. Actually, it offered five or six, at least, things to weaken even the bill that you have before you, to say nothing of the bill Mrs. Boxer and I introduced and which passed on the floor of the House so overwhelmingly.

Thank you very much for your attention.

Mr. ACKERMAN. Thank you very much, and thank you for that very excellent summary of a very all-encompassing statement which is included at this point in the record.

[The statement of Mr. Bennett follows:]

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TESTIMONY OF CHARLES E. BENNETT (D.-FLA)

Before the Subcommittee on Human Resources, Committee on Post Office and Civil Service

February 26, 1986

Mr. Chairman and members of the Committee, thank you for allowing me here today to speak about the serious problem of the "revolving door" in defense procurement.

I am not here to testify in support of the bill you have before you now. This bill is the amended version of my original bill as passed by the House Armed Services Committee. The House soundly defeated this bill when it was offered as an amendment to the Defense Authorization Act last year. The House instead attached my original revolving door language to the DOD Act by the overwhelming vote of 397 to 19.

The House took this action, firstly, because it recognized the seriousness of the revolving door problem, and, secondly, because the Committee's amended version opened up huge loopholes in my legislation. I hope this committee will restore H.R. 2554 to its original form, with whatever improvements you consider necessary.

Before getting into the specifics of the bill, let me offer you some background.

The Scope of the Revolving Door Problem

The revolving door is not confined to the defense procurement. As Time magazine highlights in its cover story this week, influence peddling is pervasive throughout the government. Time notes that "For many, public

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service has become a mere internship for a lucrative career as a hired gun for special interests." I would like to see the revolving door closed for all government officials. However, defense procurement is a special problem because it involves not just the largest single area of government purchases in the budget, but because the lives of our service men and women and the defense of our nation depend on the integrity of the system.

Some statistics illustrate the extent of the problem:

- 3,310 individuals filed reports (required under existing law) for fiscal year 1984 indicating they had left DOD within the previous three years to work for a defense contractor.
- However, approximately 70 percent of the people who should file, do not according to a recent report by the General Accounting Office.
- We can project that for fiscal year 1984, 11,033 individuals should have filed, if GAO's calculations are correct.
- GAO also says that in fiscal year 1983, 13, 682 individuals (GS-13 and 0-4 and above) left DOD. At least 3,100--or 22 percent-- went to work for defense contractors.
- The percentage of high-ranking officers who pass through the revolving door is even higher. In fiscal year 1983, 170 general officers left DOD. At least 92--or 54 percent--went to work for defense contractors.

Many of these individuals were intimately involved in testing, auditing, managing or negotiating with the very contractors for whom they then went to work. There have been numerous cases documented in Congressional hearings and press accounts of very critical weapons systems, such as the DIVAD or the Maverick missile, where entire groups of key officials involved in the programs were hired by the contractors.

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Not all of these individuals who left DOD for work with defense contractors are in conflict-of-interest situations. We do not know how many conflict-of-interest situations exist because it is very difficult--if not impossible--to collect the necessary information for that determination under existing laws.

Why? The existing reporting requirements do not work and are not enforced. The DOD Authorization Act for FY 1986 included language (section 922) which somewhat improved the forms individuals must file. The Act also required DOD to report on compliance. However, it is unlikely that this will result in greater compliance with the law.

The reporting requirement in HR 2534 (both the original bill and the bill as amended by the Armed Services Committee) would correct this situation. It would establish a reporting system for every DOD contractor with a contract of value greater than or equal to $100,000 with DOD. Each contractor would be required to report the names of recent employees who have come over from procurement positions within DOD. To enforce this provision, the Secretary of Defense would be required to review each report for accuracy and completeness and report potential violations to the Attorney General. The Office of Government Ethics would also be required to conduct a random annual review of these reports and to submit an annual report to Congress.

Some people argue that there is no problem, that legislation is unnecessary. I believe it is urgently needed. The Ethics in Government Act of 1978 was supposed to help eliminate conflicts of interest for government officials, but the provisions are weak and several reports by the General Accounting Office have shown that they are rarely enforced.

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In April of 1985 we held joint hearings on the revolving door before my Seapower Subcommittee and the Investigations Subcommittee chaired by Congressman Bill Nichols. On May 6th I introduced on behalf of myself, Mrs. Boxer and Mr. Nichols, H.R. 2554, the Defense Procurement Conflict of Interest Act. Our bill combined the best features of my original bill and that of Mrs. Boxer on this issue. It has almost 50 other co-sponsors and was passed by the House Armed Services Committee this June, but unfortunately with several weakening and objectionable amendments.

The bill you are considering today is that amended version. As I mentioned, the House, by it actions on the Defense Authorization Act of 1986, overwhelmingly endorsed the language of the original legislation rather than the weaker version coming from the Committee. After lengthy debate, the House voted 272 to 141 to accept my original bill over the Committee version. Then, by a vote of 397 to 19, the House attached the original language as an amendment to the Defense Authorization Act.

The original bill is very clear and direct. It prohibits anyone with significant responsibility for a defense contract from immediately going to work for a firm involved with that contract. Employees who have dealt with a contractor during their last two years of government service are barred from going to work for that contractor for two years after leaving the government. Anyone violating this ban would be subject to up to one year in jail and/or a fine of $10,000. Contractors would be subject to the same criminal penalties and would also be liable for contract damages of at least $100,000 if they hired someone in violation of this ban.

The House-Senate conference produced a law that now prohibits some officers and civilian officials in the Department of Defense from going through the revolving door. It prohibits a Presidential appointee who is a

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primary government representative in the negotiation of a government contract with a defense contractor from accepting employment with that contractor for two years.

This was a victory--but only a partial one. I was disturbed after the conference to find out that our compromise was being interpreted by the Department of Defense to cover, not the thousands we had intended, but a handful of officials. I believe this interpretation is wrong. The Department of Justice has advised me that the conference language does cover, not just high-level officials, but military officers, who, of course, are all appointed by the President This was my intention and I hope the Department of Defense when it issues its regulations implementing this language will follow what the Department of justice has said on this.

Is Further Legislation Needed?

Definitely yes. But you don't have to take just my word for it. I am pleased to tell you that one of this country's largest defense contractors--a firm that has been stung by several well-publicized instances of conflict of interest--is acting on its own to draft company policies along the lines of my revolving door bill. Officials from General Dynamics consulted with me last week about company policies and stated that they are considering a policy which would instruct company officials not to hire anyone from the Department of Defense who had been significantly involved with a company contract during the previous two years.

I am pleased that General Dynamics is taking this initiative. They have told me that they recognize that the revolving door publicity has created a serious problem for the defense industry and they want to be in the forefront of industry solutions to the problem. General Dynamics is

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concerned, however, that whatever policy they adopt not be too far out in front of industry practice. For that reason, they believe it is in their own best interest for Congress to enact clear revolving door legislation. I couldn't agree more. I understand that other companies are looking at similar internal restrictions on their hiring practices.

The Senate is also looking at additional legislation. Senator Dan Quayle last week introduced a bill which would pay senior procurement officials not to look for work with defense contractors. Senator Quayle wants to give these officials severance pay to support them after they leave government service so they won't be tempted to look for jobs during their final years with the government. I doubt this could work, but it does show that he is concerned that the problem is real and in need of Congressional action.

Specific objections to HR 2554

In the version you have before you today, high-level officials are excluded from coverage by section (g). It exempts high-level officials in two ways:

1) By definition: Only positions on a list provided by the Secretary of Defense would be covered. The list could not include positions with responsibility for more than one weapon, or if the primary duty is not procurement. Thus, many key positions would be exempted simply by not being on the Secretary's list.

2) By waiver: The Secretary of Defense may also exempt certain officials on the grounds that it hampers DOD's ability to recruit industry executives.

In addition section (a) was amended by the Committee to narrow the coverage of the bill to only those positions identified by the Secretary of

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Defense and to only those contractors included in a notice given to an official upon seperation from government service.

I would restore the orginal scope of the bill by striking the words "...while serving in a position identified by the Secretary of Defense under subsection (g)(1)" and "...if that contractor is included in the notice provided that individual under subsection (d)." in section (a); and by subsituting for section (g) my original language: "Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall identify the procurement functions covered by this section and the organizational positions currently performing such functions; and shall provide a list of such functions and positions to Congress."

I believe it is very poor law to try and list in a statute all the possible positions covered. Rather, my original language identifies functions. It is important what an offical does, not his or her title. This is consistent with existing law on the subject.

Why is it important to include high-level officials in the coverage of this bill?

Firstly, the standards of conduct of any organization are set by the leaders of that organization. If the leaders engage repeatedly in questionable, unethical or illegal activities, then it is likely that their subordinates will do likewise--regardless of the regulations on the books. How can we expect that the program manager or auditor for a particular weapon will follow the spirit and letter of this law if those above leave the government and reappear on the other side of the desk with obvious increases in personal income and the apparant approval of the government? The morale and motivation of procurement officials is already adversely affected by "revolving door" abuses of superiors and passing a law which

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establishes a double standard of conduct will make the problem worse, not better.

Secondly, the American public must be assured that decisions involving billions of dollars and the lives of thousands of service personnel are made as objectively and honestly as possible. This is very important for those high-level officials with the highest public visibility. The public must have faith in the management of the defense budget if we are to retain the existing national support for a strong defense, especially when confronted with mounting federal deficits.

It is unfortunate that many people have chosen to approach this legislation from the point of view of the career interests of procurement officials rather than the national interests of the United States. While many members of the armed services and officials involved in the procurement process have welcomed legislation such as this, the official view of the Department of Defense, as stated by Mr. Chapman Cox, is that "the public has been well protected against the potential influences of conflicting public and private interests by the Ethics in Government Act of 1978 [codified at 18 USC §207]." Yet the Staff Judge Advocate at the Air Force's Contract Management Division has stated that 18 USC §207 did not deter the types of post-employment problems typical of the Department of Defense. Government studies, witness testimony, and investigative reporting have established overwhelming evidence that serious conflict-of-interest problems exist, that they have not been properly addressed by current law, and that they contribute to the decreasing quality and increasing cost of some of our most important weapons systems.

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Because the existing regulations are inadequate and because they have been infrequently enforced, I introduced the Defense Procurement Conflict of Interest Act. The amendments added by the Committee watered down this legislation. I hope you will approve the bill in its original form, amending the measure before you to do that.

I would be very grateful for any suggestions this Committee would care to offer on this legislation. We hope to pass this bill in the House this session in the form of its passage before the House mentioned above and I will offer that again as an amendment to the fiscal year 1987 Defense Authorization Act, if need be. I will also continue my efforts to make sure that the correct interpretation is given to the langauge in the Defense Authorization Act for Fiscal Year 1986.

Mr. Chairman, I have attached for the record a copy of the language in the FY 1986 Authorization Act and a copy of the original language of H.R. 2534 as it was passed by the House in the Defense Bill . It is this original language I support and I hope you reject the weaker Armed Services Committee language which you have before you today.

I might point out, Mr. Chairman, that judging by the House vote on my original bill, it would have passed this subcommittee by a vote of 5 to 0.

Mr. Chairman, I appreciate the opportunity to discuss these matters with your Committee, and I would welcome any actions your Committee might undertake in this area. Thank you.

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Mr. ACKERMAN. We are very pleased to have the cosponsor of the Bennett-Boxer bill with us to testify today, Congresswoman Boxer of California, a longstanding advocate for reform within the Defense Department and many other areas of our Government.

Welcome to the subcommittee, and please feel free.

Mrs. BOXER. Thank you very much.

Mr. Bennett has informed me he has to leave in 10 minutes.

Mr. Bennett, my testimony is about 5 minutes, so hang out.

Mr. BENNETT. Oh, OK.

STATEMENT OF HON. BARBARA BOXER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mrs. BOXER. Mr. Chairman, I applaud your interest in the problem of the revolving door in government. We need your help. As Mr. Bennett has stated, we did not get that help from the Armed Services Committee, we have not gotten it from the Judiciary Committee, and we are looking to you for leadership.

Many of us realize that the watered down revolving door law passed last year as a provision of the 1986 Defense Authorization Act is ineffective. At the least, it will only cover a handful of high-ranking Department of Defense civilians. At the most—and I certainly hope it is the most—it will include commissioned officers, but the Pentagon has really not yet decided which ones.

Experience tells us that the regulations will be a long time in coming and will be as narrow as possible. I will speak more about the new law in a moment.

Last year, as Mr. Bennett has so aptly told you, the House passed the Bennett-Boxer bill, H.R. 2554. It would have mandated that any Pentagon official with significant procurement responsibility be prohibited from going to work for the contractor he or she supervised for 2 years after leaving Government. Very simple, very straightforward, we believe very fair and very just. It would have included military and civilian personnel, Presidential appointees, as well as mid-level officials.

Before approving the Bennett-Boxer bill, the House had rejected the Armed Services Committee version of that amendment which this subcommittee is now considering. They rejected it, as Mr. Bennett and I did, because it would have given the Secretary of Defense broad waiver power and would have exempted many key officials including auditors and contract officers with responsibility for more than one contractor.

Returning to the new revolving door law, it is not at all clear that it would prevent the revolving door movement that took place on the ill-fated DIVAD Program. At least eight officials involved in the development and testing of the DIVAD left the Government for jobs with the weapon's manufacturers. Neither does the new conflict-of-interest law address the kinds of concerns expressed by several front-line procurement officials whose views have been made known to several House committees.

Mr. Chairman, let me say that the comments of these individuals are very important. We hear plenty about what a terrible recruitment problem a 2-year cooling off period would present to the Pentagon. We are accused sometimes of wanting to lower morale, Mr.

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Bennett and I. Nothing could be further from the truth. There has not been a stronger advocate on the House floor of a sound defense than Mr. Bennett, and there is no way that Mr. Bennett would ever be involved in anything that would lower morale, and certainly I would not be involved in it either.

Now I say that the Pentagon and key Members of this Congress are not giving enough consideration to the deleterious effects this practice is having on our procurement system right now.

Let me review the comments of front-line procurement officials who are the real experts on this issue. The former staff judge advocate of Kirtland Air Force Base, Col. Jack Finder, told an Office of Government Ethics investigator in 1982 that the head of the Air Force plant representative's office at Northrop on Friday could become the Northrop vice president for quality assurance on Monday. He said the result was that AFPRO morale was destroyed.

So if we want to talk about morale, Mr. Chairman, it is very bad for morale for the good people in the services to see the people who would take advantage of the revolving door doing that.

Ompal Chauhan, an Air Force industrial engineer at the Boeing plant in Wichita, told the House Armed Services Committee last April that "many field people I know have feelings of helplessness, despair, and disappointment as they watch their superiors kow-tow to contractors to further personal ambitions."

Former Air Force Captain Jeff Rohm is proof that a 2-year job ban on procurement officials is not onerous or unfair. He retired and found a job with a defense contractor other than Pratt and Whitney. He was stationed at Pratt and Whitney's plant in West Palm Beach. In 1982, Rohm submitted a formal suggestion to the Air Force, and this is his suggestion, that those with supervisory responsibility over a contractor should be barred from working for that contractor for 2 years after leaving Government.

In congressional testimony last fall, he talked about the kinds of sensitive decisions affecting the flow of millions of dollars that he and other officials had to make. He told the committee it was "difficult to preach the sanctity of conflict-of-interest prohibitions and to tell our employees not to take gratuities and coffee and doughnuts when in fact they go the next day to work for a contractor."

Mr. Rohm did not find a job with Pratt and Whitney; he found a job with another defense contractor, which is fine and which our bill would allow. He says he supports the Bennett-Boxer bill.

There is one other example I want to share with you. Howard Lee Bodenhamer was an Air Force colonel at the General Dynamics Fort Worth plant when he came across the $9,600 allen wrench. Bodenhamer reported his concerns to the contractor and his superiors, but nothing was done and Bodenhamer eventually retired.

Congressional inquiries finally brought the price of that and other overpriced parts down. When Bodenhamer quit, he went to work with a real estate firm. His predecessor, however, took a job with General Dynamics. Bodenhamer told the St. Louis Post Dispatch that the move was disturbing and "had a major impact on morale." He added, "You wear the rank of colonel or commander, and literally the next day you are working for the same contractor at the same plant, and they expect the American people to believe that we're not all in the same bed together?"

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In short, Mr. Chairman, we must improve on the current laws to make certain that those who make major decisions affecting the flow of millions of dollars to defense contractors can have no other motive than service to the Government, soldier, and the taxpayer, period.

Mr. Bennett and I fully intend to offer another amendment to the 1987 Defense Authorization Act to toughen the revolving door ban on any Department of Defense official with substantial authority over defense contractors. We will do that if we do not see any movement that we consider to be good on any of these bills. We feel it is possible to come up with improved language that would satisfy our aims and still not deprive a qualified individual of post-Government employment opportunities.

I want to add here that I am encouraged that General Dynamics says it intends to implement its own revolving door policy along the lines of the Bennett-Boxer bill. That is a real breakthrough. We would welcome clear legislative language on the issue from you, and it is my belief that a fair, effective law can be enacted, and seeing that that view is shared by a major defense contractor we hope that is a fact. We certainly feel this will bring some changes to some of the people who have been saying that our law is unfair.

So in closing I again commend you for holding this hearing. We do look to you for leadership on this. We need your help, and Mr. Bennett and I will stand by and be ready to help you in any way we can as you develop the language of this bill.

Mr. ACKERMAN. Thank you very much for your testimony. It is very encouraging to hear about that move by General Dynamics. I guess it goes to prove that they really do know what defense is all about.

I know that you are both busy and have other engagements. I will just hold you for a moment, if I can.

Congressman Bennett, perhaps you could elaborate on your reasons for objecting to the exemption provision in the Armed Services version of the bill. Are you at all concerned that the Secretary of Defense would abuse such authority? Should someone other than, or in addition to, the director of the Office of Government Ethics be required to agree with the Secretary's determination that an exemption is needed in order to fill the position?

I also understand that the Judiciary Committee is considering a further expansion of the exemption provision to permit exemptions for categories of provisions in addition to specific individuals. How would you view that?

Mr. BENNETT. I would view that with a very jaundiced eye. I do not think that is an improvement. I think that is a destruction.

You know, this is not a very complicated issue. Really, the guts of it can be stated very, very clearly. That is, if a person, during the 2 years prior to leaving the Government position, has had a significant part to play in contracting with a particular contractor, then he cannot within 2 years after he has left the Government service go to work for that contractor. It is not really all that complicated. He can excuse himself.

For instance, people have talked about Mr. Packard, the chairman of a commission set up. I know a lot about Mr. Packard. He is a man of great integrity. I am sure that if Mr. Packard was con-

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fronted with a thing like that in the last 2 years of his public service he would just say, "I won't have anything to do with that contractor; I'm going back to work with this company that I worked with before I came to the Government. So I'm not going to have anything to do with it; somebody else has got to do that; I'm not going to do it, because I am going back to that other contractor," from which he came. So he would not have anything to do with it. So there are lots of ways in which this can be done.

To allow the Secretary of Defense to exempt a lot of people, a lot of positions, is just going to destroy the bill, because you will never put your finger on it, you will never find out why it is that people are doing these things that are bad and are allowed to do it under the law, for the simple reason, it will be so fuzzy that you will never be able to put your finger on it.

The bill that Mrs. Boxer and I have introduced is simplicity in itself.

Incidentally, when I talk to industry about it, they like it simple. They like an actual 2 years on each side of it. That is very understandable. It is true, it could be less than 2 years, it could be more than 2 years, but that is just really an understandable standard. Therefore, when you start putting in exemptions from the Department of Defense or something like that, you just allow them to create ways in which you will never even know when somebody violates the law.

Our law is crystal clear. There is no problem about it at all. It would be very easy to prove. All laws that are criminal in nature should be very clear, very precise, and this one is very clear and very precise. Having exemptions in it makes it very, very doubtful as to its veracity.

Mr. ACKERMAN. Thank you.

One other very quick question, Congresswoman Boxer, if I may. I think it is pretty safe to assume that because of Gramm-Rudman we are going to see many Federal agencies using reductions in force as a means to attempt to stay within their budgets.

How should this legislation affect those individuals who are RIF'd? Is it completely fair to subject these people to the bill's post-employment restrictions, or should there be some means of granting an exemption when an employee leaves government involuntarily, like a certificate of good performance stating that the person would not be restricted in seeking a new job in the private sector? Have you given any thought to that?

Mrs. BOXER. I have not, but I am glad that you are, because I think it is a very humane consideration.

The purpose of our bill is to stop something that has been going on, where people on both sides have deliberately sought out this cozy relationship, and I think if somebody is involved in a RIF situation the committee ought to take a look at that, because I would certainly be willing to.

Mr. BENNETT. Particularly in view of the fact that Gramm-Rudman is a sweeping thing.

Mrs. BOXER. Yes.

Mr. BENNETT. You could put in provisions about a RIF at this particular time. I think in the long pull that RIF's probably should be considered like everything else, because then people will know

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what they are doing. Now they do not have notice, you see, particularly if they are supposed to do this. So that is another argument to allow the RIF situation to be taken care of.

Mrs. BOXER. Mr. Chairman, I would say that, and I would add to the first question. I would applaud Mr. Bennett's statement. I really think when you start giving waiver power you are looking for real trouble, and Congress is not going to be able to have this intent of the law really followed through.

So I would urge you to make this bill tough, make it clear. I think I have proven in the testimony that there are many people who have been in this situation; it has not been onerous, they have gone to another contractor to get a job, they have worked in another field. We are talking 2 years, we are not talking 5, which, frankly, was originally what I wanted, and I compromised down to 2 years.

So I think that if you keep it simple and you keep it tough, you look at the compassionate side in terms of RIF's, I think Mr. Bennett and I would be very happy.

Mr. BENNETT. Another thing I would like to stress, if I might, and that is, our bill does not deal with perfunctory actions. In other words, just signing a paper, like the Secretary of the Navy might sign a paper about a contract. If it is a perfunctory action, a pro forma thing, it is not affected at all. It is where you had a substantial negotiating process with that company that is involved.

I am sorry, but I have to go.

Mr. ACKERMAN. We thank both of you for your excellent testimony before the subcommittee. We appreciate hearing from you. Thank you very much.

Mr. BENNETT. Thank you.

Mrs. BOXER. Thank you, Mr. Chairman.

Mr. ACKERMAN. Our next witness will be David H. Martin, Director of the Office of Government Ethics, Office of Personnel Management.

Mr. Martin, welcome to the subcommittee. Please join us at the table. Without objection, we will submit your entire statement for the record. So if you choose to summarize it, we would be glad to hear that as well.

STATEMENT OF HON. DAVID H. MARTIN, DIRECTOR, OFFICE OF GOVERNMENT ETHICS, OFFICE OF PERSONNEL MANAGEMENT

Mr. MARTIN. Thank you, Mr. Chairman. I appreciate your having me here to testify on this very, I think, important matter involving conflicts of interest and postemployment conflicts of interest. I do appreciate the opportunity because I think there is a need to examine this area in some detail.

As you know, there are two arguments to the postemployment issue. One side says the revolving door is too tight, let us open it a little wider, we need a cross-fertilization of ideas between the private sector and the Government sector, and that it is beneficial to have people move back and forth between Government and industry and the academic world, and I think it is beneficial.

On the other side there is an argument, I think, represented by Congresswoman Boxer and Congressman Bennett, that says it is

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too wide, there is a need to stop individuals from benefiting from their Government experience to the detriment of the Government, and I think that is a valid argument, but I do not know that it has been proven to be a problem or the extent of the problem has not been proven.

So while I agree that there may be an appearance problem——

Mr. ACKERMAN. Did you say that it is important and we have an interest in seeing people go from the Government to private industry?

Mr. MARTIN. I think there is a legitimate argument that both the Government and private industry do benefit from the exchange of intelligence and experience and information—proper exchange—that can happen when people move back and forth between industry and the Government.

Mr. ACKERMAN. Would it be more beneficial for people to move from the Government to private industry or from private industry to the Government?

Mr. MARTIN. I think they both benefit. I think that there is a benefit going both ways in some instances.

The problem that I think the kind of legislation you are examining now contemplates—the problem it contemplates is that someone misuses his position and then gets a position in private industry, and misuses it by not being tough enough in administering a contract, by being too lenient in a contract, by having add-ons and run-ups, and then going out and administering that very same contract.

Mr. ACKERMAN. Do those things exist?

Mr. MARTIN. Do those things exist? Yes, and it is not against the law now. I do not know how much of it exists. I do know it exists. You have seen them in the newspapers.

Mr. ACKERMAN. Should they exist?

Mr. MARTIN. Should they exist? Oh, that is a question—you are asking me to go to the heart of the issue right now.

Mr. ACKERMAN. Yes.

Mr. MARTIN. You are.

Well, I was not prepared to do that so soon, but let me tell you——

Mr. ACKERMAN. Take your time; we will wait for you.

Mr. MARTIN. Well, I had some other things I hope you will let me go back to.

Mr. ACKERMAN. Absolutely.

Mr. MARTIN. OK. The heart of the issue is, should someone administer a contract, work on a matter, whether a lawyer, a doctor, or an Indian chief—should you work on a matter for the Government and then should you be allowed to leave Government and go to work for private industry and work on that very same matter? That, I think, is the heart of the issue. Is there something that affects and hurts the Government by that?

As you know, Congressman, it is now illegal under title 18, section 207, United States Code to work for the Government on a particular matter involving specific parties—that is, a contract dispute, a lawsuit—and then to go to work in the private world and to come back to the Government and represent on that same matter.

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It is not, of course, illegal to work on that matter back at corporate headquarters or back in the law firm. Bar rules might prohibit you from doing that—in other words, the bar rules may, and do frequently, go further than the law.

So the question is, I think, do you want to extend the present prohibitions further and say you cannot even work on that matter, regardless of whether you do representational work. Do you want to have that bar? And that is as far as I would go in the postemployment kind of situation.

If I knew the problem existed, the furthest I would go is, I would say, "Yes, Mr. Employee, you may leave the Government, but you may not go to work on a specific matter involving specific parties and work for that company and do the same thing you were doing for the Government."

Now, you have a tremendous problem with enforcement there. But that is the extent that I would go. If you find for me—and I do not know that the evil exists, the detriment to the Government.

Mr. ACKERMAN. I thought we had agreed to that.

Mr. MARTIN. No; I have not.

Mr. ACKERMAN. OK.

Mr. MARTIN. No, I have not. I think there are appearance problems, and I think there are anecdotal problems. I think there are examples where a high ranking, either uniformed or non-uniformed, official——

Mr. ACKERMAN. What are anecdotal problems? Are those specific examples?

Mr. MARTIN. Yes; that is specific examples.

Mr. ACKERMAN. So except for the specific examples, there are no problems.

Mr. MARTIN. There are no violations of current law; let me say that; there are appearance problems.

The head of a specific contract procurement program may leave his current job and go to work for the contractor who is building that vehicle or defense weapon, and if he does not come back and do representational work for that company to the Government and on that particular contract or that matter, he has not violated present law. He has created what I would call an appearance, a confidence problem, and the media focus on high ranking officers and high ranking civilians—that is, presidential appointees—and they say, "Look at this person; he was administering, in charge of a contract one day, and the next day he is going to work for private industry, and you know that he is going to be working on that very same program."

That is not a violation of present law now. But it does give the appearance that that person is either using the knowledge he had in the Government improperly or that he cut a deal beforehand. That is the appearance you have.

Mr. ACKERMAN. We are not here to determine whether or not anybody is guilty or innocent of violating current law. I think what we are participating in right now is a process to create additional law that, if people violate, they will be guilty of.

The statement that you make about the appearance of something being wrong and referring to it as a media concern—let me tell

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you, perception is the only reality that I have, and I think that is true with everybody else who is here.

When people have the perception that things are going wrong with their government and its agencies, then that shakes the very foundations of trust that we have in our democracy, and I think when that starts to happen we see a lot of other things that shortly follow that we cannot as Americans appreciate, and I think that that very perception is probably the problem that we have to deal with.

If there is a perception that something is improper, then people have made a moral judgment that it is improper, whether or not it is a violation of some existing statute, and I think that what we are doing now is to make a determination as to how to revise or add to existing statutes so that things that people perceive are wrong are no longer done.

Is that a fair statement?

Mr. MARTIN. Well, I cannot entirely agree with you, Mr. Congressman.

Let me say this: I do not think that we should pass laws based on perceptions that are more broadly based, and their coverage is very broad, which this present law is—it would pick up a lot of people—than is necessary to deal with the known problem.

What is the known problem? I submit to you that the extent of the problem is not known, it is unknown. I do not have the facts to justify the kind of law that you are now considering.

Mr. ACKERMAN. Since 1978 the General Accounting Office has recommended that the Government should—and I will quote from it—"develop and implement a system to determine the extent to which post-Federal employment activities of former Government officials may be a problem."

The GAO renewed its call for such a system last year and said that the Office of Government Ethics—the OGE—should take the lead.

The question I have for you is, why is it that the OGE has never established such a system to make that determination? Do we want to put blinders on and say that it does not exist?

Mr. MARTIN. No.

Mr. ACKERMAN. Would you agree to set up something so that you and I could both look at those facts and those numbers and statistics that you claim ignorance of right now?

Mr. MARTIN. If you will agree to finance it, I would love to do it.

Mr. ACKERMAN. In other words, you would advocate having such a study done?

Mr. MARTIN. I think such a study should be undertaken, but it would take a tremendous amount of manpower.

Mr. Chairman, there were at least 14 million contract situations last year in the Department of Defense alone. We know how many people left the DOD and went into private industry, but it would take quite an extensive study and interview of the people who left, and you would not just have to know—Congressman Bennett seems to think it is sufficient if you just know how many people left and went into private industry. That is not sufficient for our problem.

What is sufficient for our problem is to understand how many people left, where they went, and what they are doing, and what

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they did before they left, and whether or not—you would have to ask these people, "Were you influenced in your decision to leave by the company you are now working for? Did you make any favorable treatment to that company, and did you negotiate for employment beforehand?"

Mr. ACKERMAN. Would you find the answers to those questions helpful?

Mr. MARTIN. Would you? That would answer your problem as to whether or not you have—that would answer your problem, yes, but you would have to interview a lot of people and ask a lot of questions. I have a staff of 23 people; I cannot do it.

Mr. ACKERMAN. Could you explain to the subcommittee, if you would, briefly, what your agency does and what your function is and what you do on a monthly basis?

Mr. MARTIN. Yes; I would be happy to. That was part of the unprepared remarks, but I would be glad to do that now, Mr. Chairman.

The Office of Government Ethics was established as oversight. We have policy direction for all conflicts of interest and standards of conduct laws and regulations. The criminal laws we share in conjunction with the Department of Justice in terms of interpretation.

The act envisioned a decentralized system of enforcement and training and education whereby we set the policy and the standards but each agency bears the specific responsibility for not only reviewing financial disclosure statements, determining whether there are conflicts of interest, and taking whatever action might be appropriate.

The Office of Government Ethics is seen as an oversight, if you will, for these agencies. When the act was passed, a study by GAO determined that, depending on who happened to be the head of an agency, its standards of conduct and conflict of interest and ethics program was either weak or strong.

So our office was created to monitor, if you will, what is going on in the agencies and to make recommendations.

Now as part of that effort, I have a monitoring and compliance staff. Every 3 years, each executive branch agency is visited and reviewed, and I write a report to the head of that agency telling them of their deficiencies or how good their program is or how good it is not.

As part of that audit program, we ask the agency ethics officials what their problems are in the postemployment area. We have not received from those agency ethics officials an indication that postemployment laws presently on the books are now a problem—that is, the representational activities.

Mr. ACKERMAN. How many of those agency ethics officials go to work for contractors after they leave Government employ?

Mr. MARTIN. I would not know, but I would dare say very few of the ethics officials. They are usually career-type people in the general counsel's office that have been there many, many years, such as Mr. Ream who may accompany Ms. Buck to testify here before you. Mr. Ream is well known to us. We understand his problems. We work with them. We have a tremendous education and training program that is ongoing with the Department of Defense.

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For instance, last year my office trained on 44 separate days approximately 3,400 Federal employees. We provide training in ethics and conflicts of interest and standards of conduct.

Mr. ACKERMAN. Just give us a rough idea. How do you train them?

Mr. MARTIN. We have seminars, workshops, speeches, we will take a day-long ethics conference. We will go to an agency like EPA, which we have done, or to DOD, and we will have every high ranking official invited to attend a day-long seminar, and we will train. I will have a staff or attorneys and auditors there, and we will teach the conflict-of-interest laws, title XVIII, sections 201 to 209, from postemployment to supplementation of salary to bribes, and we will also train on the standards of conduct, travel honoraria, gifts.

We have a ready supply of training materials—and I have brought some with me today which I want to make part of the record—which we provide to agencies on a regular basis.

We have a portfolio of decisions that we have made in the ethics area, including postemployment to present employment problems. We use those examples in our training.

Mr. ACKERMAN. Have you done this with the Army?

Mr. MARTIN. Yes, Army Materiel Command.

Mr. ACKERMAN. How long ago?

Mr. MARTIN. I do not know. I can provide that for you. It was this year.

[The information follows:]

We performed an audit at the Department of the Army in the Office of the Secretary in August 1983. The next major audit of the Dapartment of the Army is scheduled in fiscal year 1986.

Mr. ACKERMAN. The Army inspector general's DIVAD study found widespread ignorance of conflict-of-interest guidelines and that 11 offices investigated "were generally ignorant of the guidelines which prohibit Government officials from acting in an official capacity with respect to a firm who they are seeking employment."

It sounds to me like the OGE is not doing the job that Congress and the public expect of it, if we are to believe that report.

Mr. MARTIN. That is true, but there are over 2 million Federal employees, and I have 23 employees.

Mr. ACKERMAN. What kind of advice have you given to the Army, and why is that message not getting through to the military officers?

Mr. MARTIN. I am quite surprised at that report. I have not seen that, but I would like to see it, and I would like to respond in writing to it. If I have seen it, I am not familiar with it.

Mr. ACKERMAN. The Army does not want us to give it to you.

Mr. MARTIN. I do not blame them.

Mr. ACKERMAN. Me neither.

Please continue.

Mr. MARTIN. Because I might have an answer for them.

Mr. ACKERMAN. Now that I have shared that much with you, maybe you can make believe you have seen that part and maybe respond to it.

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Mr. MARTIN. Well, if they have a problem, they certainly have an obligation to let me know, and I am really surprised at that.

Mr. ACKERMAN. This report is dated a year ago April.

Mr. MARTIN. I do not have a response to it except that if someone brings a problem to my intention, and I am in touch with Department of Defense ethics people on a pretty regular basis—if they have a problem—I sent this year a letter to the head of every agency offering training and education and urging them to institute training, if not mandatory training as some agencies have done, certainly to require training of their high-level people, and offered my staff—and I will send you that letter—offered my staff to help.

[The material follows:]

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SAMPLE (1)

United States of America
Office of Government Ethics

Office of Personnel Management
P.O. Box 14108
Washington, D.C. 20044

Dear

Congratulations on confirmation to your new position. As Director of the Office of Government Ethics, I recently signed your financial disclosure statement and certified to the Senate nominating committee that, based on this Office's review of your report, we believe you to be in compliance with the laws and regulations governing conflicts of interest.

You will be required to complete one of these statements and file it with your Designated Agency Ethics Official by May 15th annually. It will be reviewed and certified to ensure that your current financial interests pose no actual, potential or apparent conflict with your official duties.

Financial disclosure is only one of the ethics requirements you will be subject to as a federal official. There are many more complex and often confusing laws on conflicts of interest, and regulations regarding the standards of conduct that can trap the unwary officeholder. It is in your own best interest to acquire a full understanding of these restrictions.

Most newly appointed officials enter office as highly respected professionals in their field. They are confident that their understanding of ethical business practices will serve them well in the public sector. However, many have been rudely awakened to find themselves the subject of sensational newspaper allegations for actions they would have considered perfectly proper in the business world.

To ensure that you do not find yourself in this situation, please contact your Designated Agency Ethics Official at your earliest convenience for a personal briefing on these very important laws and regulations. Also, feel free to contact me at 632-2792 for assistance.

Sincerely,

David H. Martin
Director

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SAMPLE (2)

United States of America
Office of Government Ethics

Office of Personnel Management
P.O. Box 14108
Washington, D.C. 20044

Dear :

One of the statutory responsibilities of the Office of Government Ethics is providing information on and promoting understanding of ethical standards in executive agencies. As Director, I have continually stressed the need for more and better formal ethics training within the executive branch. One need only read the newspaper to realize that allegations of ethical impropriety against government officials are not uncommon occurrences.

Often a common theme in many of the allegations of misconduct is that a charged individual claims lack of understanding of the impropriety of the act, and moreover the act would not be considered improper in the private sector. While ignorance of the applicable ethics rules and regulations is no excuse, I wonder how many of these incidents would have been prevented if government officials understood the various ethical restraints imposed on them by virtue of their government service.

The laws on conflicts of interest and regulations regarding standards of conduct have evolved over a period of more than one hundred years, and are complex and often confusing. Their intent is to protect the integrity of government decision making. In order for the system to be effective, government employees must be aware of and understand these laws and regulations. In this area a little prevention goes a long way, and education and training are the key to prevention.

My staff and I are prepared to assist in educating your employees, having developed training materials and launched successful ethics training programs in several agencies. We can assist, not only in planning an employee training program, but in conducting it as well, until in-house personnel are prepared. The training may take the form of periodic, short sessions presented to groups of employees, or it can be integrated into regularly scheduled agency meetings and conferences, such as those you may hold with your regional directors. It does not have to be elaborate or time consuming. A commitment by you for resources to commence regular and even mandatory ethics training is the first step. Please have your Designated Agency Ethics Official contact my office if you would like assistance.

Sincerely,

David H. Martin
Director

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Mr. MARTIN. I have probably gotten back a dozen requests for that kind of assistance and many from branches of the military. If the Army did not request it—I am going to make a note of that. I am a little upset at that.

Mr. ACKERMAN. It seems to me that with 23 people you are severely handicapped in being able to ride herd over all of the Government agencies that we would like and hope to see functioning in an ethical fashion in accordance with the standards that have been established.

How can we expect you to be doing a job, looking into all of these things, with millions of people involved? Can we expect you to adequately be able to be responsive?

Mr. MARTIN. In a short answer, no, because, as I said in my opening statement, the Ethics in Government Act envisioned each agency having responsibility for doing their own ethics program. My job is policy and oversight.

The Congress, in its wisdom, decided it did not want a superethics office with hundreds of employees, I guess, meddling around in the executive agencies' programs and responsible not to the head of the agency but to someone like me.

In other words, I think there were two options. One is for an ethics office to be truly huge and have hundreds or maybe thousands of employees and to have people in the agency directly responsible to me, or to have it decentralized and have the ethics officials in the agencies report to the general counsel or have the general counsel work for the agency, and it was decided the decentralized method was best in terms of management of agency programs.

So while I only have 23 employees, I have the general counsel and 1 or 2 people in every general counsel's office who, on an ad hoc basis, do ethics matters. They do not report to me, and I cannot direct their time, and I cannot tell them to do their own audits and their own surveys, but I do work with the inspectors general and have a good rapport with them. If they have a problem in the ethics area and they are not telling me, I am going to raise it at the next meeting of the President's Council on Integrity and Efficiency, because that is why I ask you about this Army report.

Mr. ACKERMAN. Let me ask you a question. Do you think it is a conflict of interest for a Federal employee to send a résumé to contractors which he or she has significant responsibilities in overseeing? Does that not constitute an opening up of negotiations for future employment?

Mr. MARTIN. It does. Whether or not it is full negotiating in the meaning of section 208 I am not sure, but it is certainly a violation of the standards of conduct to send the letter. It certainly would be a violation of the standards of conduct to send the letter.

Mr. ACKERMAN. Help me to understand something from page 7 of your statement, if you would.

Mr. MARTIN. My statement?

Mr. ACKERMAN. Your statement.

Mr. MARTIN. I am listening.

Mr. ACKERMAN. Would you like us to give you a copy of your statement? [Laughter.]

Mr. MARTIN. I have my statement.

That is how confident I was, Mr. Chairman. No; I'm just kidding.

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Mr. ACKERMAN. We appreciate that.

On page 7 you state that Army regulations give a broader meaning to negotiations than the rest of the Pentagon or any other agencies. Is that accurate?

Mr. MARTIN. That is, and that is clearly within their prerogative to do that.

Mr. ACKERMAN. Do you recommend that others do that?

Mr. MARTIN. I think it is a good idea in terms of—it depends on the agency and what they do and their procurement problems, but it certainly is not—it would depend on the agency, but I certainly would recommend it in certain instances; yes. It prevents the appearance and deals with that appearance.

Mr. ACKERMAN. One of the controversies about H.R. 2554 is the question of whether it should include an exemption. The Armed Services version provides for an exemption if you and the Secretary of Defense agree that one is needed. Do we need the exemption provision?

Mr. MARTIN. You mean to exempt an employee from the provisions of the law?

Mr. ACKERMAN. Yes.

Mr. MARTIN. Yes; I would say I would not have a problem with that. You know, we have waiver provisions now on financial interests, and we look at those waivers, and the head of an agency can waive a financial interest if in fact it is not so significant that it would affect the judgment and the integrity of the decisionmaking official's decision. So I would not have a problem with that.

Mr. ACKERMAN. Besides that, under what circumstances would you agree that a procurement position would qualify for exemption?

Mr. MARTIN. Well, if you have a broad definition of a procurement position and a person is really not in, let us say, the decision recommendation approval line but he is aware of the contract and he has knowledge of it, but he is not in any of those crucial positions that either decides, recommends, or approves, then I would say you might want to give that person an exemption.

Mr. ACKERMAN. But if he is in those positions?

Mr. MARTIN. And if he is in those positions, you would not want to give him an exemption, no—where he decides, recommends, approves.

Mr. ACKERMAN. If we defined those positions or listed those positions, then?

Mr. MARTIN. You would have to clearly have those positions defined and listed and—right.

Mr. ACKERMAN. Then you would be satisfied that an exemption provision would not be needed in those instances?

Mr. MARTIN. Well, I cannot say whether they would be needed or not, but I would be satified that if my office were part of the decisionmaking process we would carefully look at that and make sure that no one got an exemption who was not authorized to have one.

We have a great deal of experience with that kind of thing in our senior designations, where we have to designate senior employees for postemployment restrictions, and there are problems with that in terms of continually monitoring and updating your senior employee designation, but it can be done.

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Mr. ACKERMAN. Under what foreseeable circumstances would you ever disagree with the Secretary of Defense on that?

Mr. MARTIN. That is tough; that is speculation.

Mr. ACKERMAN. Thank goodness I got in a tough one.

Mr. MARTIN. I might disagree with the Secretary of Defense or the general counsel there on the extent of someone's involvement in a contract. The problem is, you would be looking at position descriptions and not actual involvement. So you would have to make it based on a position description.

Mr. ACKERMAN. If someone is forced from his job because of a RIF, should there be a method to grant that person an exemption from this law so he would not be restricted in looking for employment in the private sector?

Mr. MARTIN. If you pass this law, I would say that—if you pass a law like this, first of all, it should not apply only to the Department of Defense, it should apply to everybody, and I would say RIF's—you know, if you pass the law, that is part of being a Government employee. So I think I would take a hard line on that—if you were to pass the law. Now I do not favor the law as written.

Mr. ACKERMAN. How many people would you need under your direction if this were to apply to everybody?

Mr. MARTIN. Lots more; a lot more. The law envisions an audit responsibility, and that would be for the entire Federal Government. The law envisions a decisionmaking process for my office. So I would need a good deal of legal staff as well as intelligence staff.

Mr. ACKERMAN. Director Martin, we thank you very, very much for your participation at today's hearing and for standing up so steadfastedly for those things you believe in.

Mr. MARTIN. Mr. Chairman, I brought with me our Ethics Newsgram, and our special edition yearend review, as well as the most recent pamphlet that we have put out to be distributed to every Federal employee in the Government.

Mr. ACKERMAN. Would you have some extra copies of that that I could bring home to Queens?

Mr. MARTIN. We could make them available, yes. But I would like to submit them for the record for your perusal.

We deal in our Ethics Newsgram with negotiation for employment, postemployment problems, supplementation of salary—a wide garden variety of problems that come up on a daily basis in our office.

Mr. ACKERMAN. We appreciate that.

Mr. MARTIN. Thank you, Mr. Chairman.

Mr. ACKERMAN. Thank you very much, Mr. Martin.

[The statement of Mr. Martin follows:]

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FOR RELEASE ON DELIVERY
Expected at 11:00 a.m. (est)
February 26, 1986

STATEMENT OF

DAVID H. MARTIN
DIRECTOR
OFFICE OF GOVERNMENT ETHICS
Office of Personnel Management

BEFORE
THE SUBCOMMITTEE ON HUMAN RESOURCES
OF
HOUSE OF REPRESENTATIVES' COMMITTEE ON POST OFFICE AND CIVIL SERVICE

ON
H.R. 2554
THE "DEFENSE PROCUREMENT CONFLICT OF INTEREST ACT"

FEBRUARY 26, 1986

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

I appreciate the invitation to appear before this hearing of the Subcommittee to present the views of the Office of Government Ethics (OGE) on H.R. 2554 — "Defense Procurement Conflict of Interest Act."

Prior to addressing the merits of the proposed legislation, I think it important to review the current post-employment rules and their affect on the procurement process. At the time the Ethics in Government Act was signed into law in 1978, Title V of the Act contained amendments to 18 U.S.C. section 207, a criminal provision designed to delimit former officers and employees' representational participation in matters relating to their

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previous official activities and responsibilities. Sections 207(a) and (b)(i) are designed to prevent any former employee from switching sides and representing a private client in the same particular matter involving specific parties in which he or she had previously participated personally and substantially while a Government employee or which had been under his or her official responsibility. The former is a permanent or lifetime bar, while the latter involves a two-year bar on any particular matter under the former employee's official responsibility during his or her last year of federal service. Section 207(c) is based on a different theory as its prohibitions are not limited to particular matters in which the former employee was involved. Former high-ranking (senior) employees are barred for one year from representing anyone before or, with the intent to influence, doing business with their former agency. The matters covered are broader; they need not involve specific parties so the former employee could not, for example, attempt to influence rulemaking or policy formation. The restriction covers the former employee's self-representation.

The language of the Ethics in Government Act, as originally enacted, prohibited for a period of two years after employment ceased those designated as "Senior Employees" from providing assistance in representing any person, other than the United States, "concerning" any formal or informal appearance. The original language was not thought to accurately reflect the intention of Congress in that it allowed for two possible but clearly unintended interpretations: (i) that certain otherwise legitimate activities connected with the management of grants and contracts were barred; and (ii) that the "assistance in representing" bar extended both to matters in which the former Senior Employee had personally and substantially participated and matters which, although not having personally and substantially participated in them, had been actually pending under his/her official responsibility. The amendments to the Act (Pub. L. 96-28, June 22, 1979)

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provide that 18 U.S.C. §207(b)(ii) applies only to that assistance given within two years after leaving Government serivce, by "personal presence" at any appearance before the Government. The amendments further provide that this two-year bar applies only to matters in which the former employee has "personally and substantially" participated.

The provisions of 18 U.S.C. §207 do not, however, bar any former Government employee, regardless of rank, from employment with any private or public employer after Government service. Nor do they effectively bar employment even on a particular matter in which the former Government employee had major official involvement except in certain circumstances involving persons engaged in professional advocacy. Former Government employees may be fully active in high-level supervisory positions whether or not the work is funded by the United States and includes matters in which the employee was involved while employed by the Government. The statutory provisions are not intended to discourage the movement of skilled professionals in Government to and from positions in industry, research institutions, law and accounting firms, universities and other major sources of expertise. See for instance Congressman Danielson's 1977 report on behalf of the Committee on the Judiciary (Rept. No. 95-800, 95th Cong., 1st. Session, P. 32) and his remarks on the occasion of the 1979 amendments to 18 U.S.C. § 207(b) in which he expressed concerns with provisions which are so stringent that highly skilled people would leave the federal work force causing an unacceptable "brain drain". Cong. Record, daily edition, H. 4596, June 15, 1979.

Government-wide regulations, promulgated by the Office of Government Ethics, implementing the criminal provisions can be found at 5 C.F.R. Part 737. The Department of Defense has implemented departmental regulations in DOD Directive 5500.7.

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Broader restrictions have been suggested to close the revolving door to prevent subjective influence on federal employees, to protect the Government's interest in confidential information made available to its employees, and to guard against the appearance of conflict of interest on the part of its employees. This call for broader restrictions has to some extent been precipitated by abuses that occur when current federal employees negotiate for or enter into arrangements with future employers. Participation as a Government employee in a particular matter in which such employee has a financial interest is prohibited by the criminal provisions of 18 U.S.C. § 208. Subsection (a) of § 208 prohibits a Government employee from participating personally and substantially as a Government employee in any particular matter "in which, to his knowledge, he, his spouse, minor child, partner, organization which he is serving as an officer, director, trustee, partner or employee . . . or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment . . . . has a financial interest". The term "financial interest" is not defined. However, a number of federal court decsions such as United States v. Conlon, 628 F. 2d 150 (D.C. Cir. 1980) have addressed the "negotiating" issue. The statute deals with the conduct of a Government employee in his role as its servant or representative, as distinguished from his conduct in a private capacity. Section 208 does not disqualify anyone from holding a particular Government position; instead it provides sanctions for participation in certain governmental matters in which an employee has a financial interest. This requires a case by case determination as to whether disqualification, recusal or a waiver is necessary.

Opponents contend that broader restrictions would inhibit the beneficial movement of employees from private industry to government and vice versa by making public employment less attractive. We are aware of little empirical data to support either side

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of the controversy. My advice to this Committee is that such restrictions should not be drawn more broadly then necessary to deal with the dangers realistically presented and known. Strengthening administrative requirements relating to notice, disqualification and civil sanctions may eliminate many abuses without imposing undue burdens on current and future government employees.

Over the past five years the OGE Monitoring and Compliance staff has performed reviews of twelve major Department of Defense (DOD) offices, agencies, and commands. We have also visited approximately 50 DOD field installations. On each visit we always inquire into the major ethics problems and included is a discussion with the ethics official as to whether any post-employment problems exist. In reviewing reports and summaries of field visits, we found that in only twelve instances did ethics officials raise any concern for either post-employment problems or agency actions to remedy post-employment problems.

We do not have any overall statistical data to show the extent of any post-employment problems and conflicts that may exist. We have found isolated instances where problems have occurred or where local commands have taken action to remedy a perceived problem. For example:

- In 1982, the Staff Judge Advocate of the Air Force Contract Management Division stated that there was a large turnover of Division personnel, especially those working in Air Force Plant Representative offices, who leave to work for contractors. He stated that these types of cases are devastating to the ethics program because of the appearance of conflicts of interests.

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- In 1983, we recommended that Air Force Systems Command (AFSC) require all employees to notify their supervisors in writing before entering into negotiations for employment with an AFCS contractor or potential contractor. AFSC responded to us that such reporting would be required only if job interview expenses were accepted by the employee.

- In 1983, we recommended that the Naval Material Command provide departing employees with information on post employment restrictions.

- In 1982, the Air Force Space Division told us that they had classified certain key procurement positions into categories with each category subject to varying degrees of restrictions concerning negotiating for employment with contractors. For example, in the most stringent category, employees were not to engage in employment discussions with any Space Division contractors until they were released of their command or position.

- In 1985, we reviewed the computerized visitors registration system at the Army and Air Force Exchange Service (AAFES) and found it, with minor revisions, to be an effective method for enforcing the post employment laws and the military civil and criminal "selling statutes." Each visitor to the Service must complete one of several forms giving information on their Government or military background and vendor they are representing. These forms are then reviewed and the individual given clearance before he is allowed to see AAFES procurement personnel.

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- In 1982, the counsel at the Portsmouth Naval Shipyard learned at a retirement party that the employee was leaving to work for General Dynamics Electric Boat Division. Subsequently, he sent a notice to all employees that they must report to the Supervisor of Shipbuilding when entering into negotiations for employment with any contractor or when their spouse or minor children take employment with any Shipyard contractor. He also advised employees they may not own stock in General Dynamics and certain other contractors.

- In 1983, we recommended that the Army Material Development and Readiness Command (DARCOM) centralize their visitor control system to make it more effective in preventing violations of 18 U.S.C. SS 207, 208 and the civil and criminal selling laws.

We have also performed similar reviews in the civilian agencies and found that they are anxious to establish procedures and systems to prevent ethics related problems. We have helped agencies with these problems and we have reviewed their procedures and systems to make them more effective. In many agencies, both civilian and military, agency personnel indicate that they have no post employment problems. However, it might be that they just are not aware of those that exist. In November of 1984, the Department of the Army implemented its standards of conduct regulations (AR 600-50) by including as "negotiating" any action by Department personnel that reasonably could be construed as an indication of interest in future employment, including sending letters or resumes, making telephone inquiries, or failing to clearly reject unsolicited proposals. We think this goes far beyond the definition of "negotiations" on which Congress and a number of federal courts have provided substantial definitional guidance, but may be an effective administrative means for preventing some of the abuses which this legislation seeks to address.

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In our agency reviews and training courses we routinely inquire as to the major ethics problems that exist, including post employment matters. We stress that departing personnel must be given information and/or briefed on the post employment restrictions. In 1985, we also assisted the Department of Defense in establishing an ethics training program by conducting 18 of their initial training seminars. This educational outreach is undertaken in a variety of circumstances. For instance, in March of 1985, members of my staff spoke to 900 employees of the Naval Air Systems Command. On at least monthly intervals, members of my staff present a study unit at one of the government's executive training centers, where senior employees (GS-15 and above) of the Department of Defense are in attendance. We have established pilot sessions to implement training programs for the 650 senior employees within the Office of the Secretary of Defense who file the public financial disclosure statements (SF 278) as well as separate session for the 4,643 other employees of that Office, most of whom are located in the Pentagon. In addition, regional training sessions (5) and Ethics sessions conducted by this Office in the Washington, D.C. area (6) normally have DOD personnel, who are involved in administering the DOD program, in attendance.

We should also note that personnel in grades GS-16 and above and military O-7 and above are required to file public financial disclosure reports within 30 days of terminating employment. These reports must disclose any agreement the filer has reached for future employment. These reports (SF-278) were revised by this Office in January of 1985 to specifically require disclosure of any agreements for future employment even if all the terms of the agreement have not been settled. We think this will be beneficial in understanding the extent of the revolving door at that high executive level. To date, our review of these termination filings have not revealed this to be a problem area.

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Section 2 of H.R. 2554 would prohibit former Department of Defense personnel who (during the two-year period preceding separation from service) had significant responsibilities for a procurement function with respect to a contractor while serving in a covered position, from accepting compensation from that contractor for a period of two years following separation. Covered positions are those "that have as their primary duty the management, direction, oversight, or justification, with respect to a particular product or service." "Compensation" includes any payment, gift, benefit, reward, favor gratuity, or employment valued in excess of $100 at prevailing market price, provided directly, indirectly, or through a third party.

The bill would limit its provisions to contractors having at least one procurement contract in excess of $100,000. The possible sanctions for a former employee are fines up to $10,000 and one year imprisonment.

Covered contractors are required to include contract provisions under which the contractor agrees not to provide individuals coming from DOD positions with "significant responsibility for a procurement function" compensation during the two year prescribed period. Violations of contract provisions include liquidated damages under the contract of an amount equal to the greater of $100,000 or three times the compensation paid by the contractor to the individual in violation of such contract provision. Additionally, covered contractors must file reports listing the name of each covered individual provided with compensation by the contractor after leaving Government service. The report must also disclose the covered individual's employing agency, job title, complete description of duties during the last two years of such service, and a description of duties being performed on behalf of the contractor. The Department of Defense is charged with the

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responsibility of reviewing each report, assessing its accuracy and completeness, and identifying possible violations. Failure to file a report subjects the contractor to a fine of not more than $10,000.

The bill would provide that individuals may seek advisory opinions from the Director of the Office of Government Ethics on the propriety and legality of acceptance of compensation from a defense contractor. The Office of Government Ethics would also be required to conduct annually a random review of required contractor reports with respect to compensation paid to covered employees, and to submit an annual report to Congress on the operation of the Act. The Secretary of Defense must identify the procurement functions and organizational positions performing the functions. The Secretary of Defense would have the authority, in consultation with the Director of the Office of Government Ethics, to exempt individuals hired for a DOD position if the position involves responsibility for interaction with so many contractors that the ability to attract or retain qualified individuals would be hampered.

The proposed legislation would impose post-employment job restrictions on Department of Defense procurement personnel drastically differing from those applicable to other former government employees and would be contrary to the uniform approach which we have been striving to accomplish in dealing with conflict of interest issues within the Executive branch. A significant problem is the breadth of the definition to be given to the expression "significant procurement function". An expansive interpretation would appear to encompass almost everyone in DOD involved in the procurement process and would create a substantial employment restriction affecting mid-level (and above) Government personnel because of prior involvement in a contract, regardless of actual conflict. However, the administrative classification of covered positions and the advisory

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process appear administratively burdensome. The former agency of each individual applicant seeking an advisory opinion would have to provide extensive documentation in order to support an Office of Government Ethics review. Filing of exemption applications in the Federal Register is of dubious notice value. Experience on the part of the Office of Government Ethics in dealing with the senior employee designation process under 18 U.S.C. § 207(d)(1)(c), a process similar to that currently contemplated under this legislation, has shown that such a process is difficult to administer in light of frequent agency reorganizations, changes in administration, reduction in force and other changes in personnel which result in outdated position descriptions and inadequate explanations of where the individual fits within the organization's chain of command. In short, the legislation is so broad and its concepts so vaguely defined that it would be incapable of enforcement and of doubtful value.

New provisions on the conflicts aspect of defense procurement have recently been enacted into law by sections 921 through 923 of the Defense Authorization Act of 1986. Under that law, Presidential appointees who act as primary government representatives in the negotiation or settlement of government contracts with a defense contractor are barred from accepting employment from the contractor for two years after termination of their involvement with such contracts. The provision calls for sanctions of one-year imprisonment, a fine of up to $5,000 and, in the case of violations by a defense contractor, forfeiture up to $50,000 in liquidated damages. We understand that the expression "primary government representatives" will identify only those senior federal officials who serve in the capacity as "contracting officer" or an equivalent position.

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In addition, this approach will amend 10 U.S.C. §2397, requiring all current civilian officers and employees of the Department of Defense in positions dealing with a procurement function for which the rate of pay is equal to or greater than the minimum rate of pay payable for GS-11 or active duty uniformed members of the armed forces in pay grades of 04 or higher, to report any contact by the defense contractors regarding future employment.

Where the offer is not rejected immediately, the covered employee must disqualify himself from all participation in the performance of procurement functions relating to contracts of the defense contractor. Violations are sanctioned through use of administrative penalties assessed by the Secretary of Defense in an amount of $10,000 or less. Action may be taken by the Secretary even after the employee terminates federal service. Covered employees may seek written advisory opinions from the designated agency ethics official.

Reporting requirements have also been amended in the case of former DOD employees, GS-13 or equivalent pay, or uniformed officers with 10 years of active service at a grade of 04. When such covered individuals are employed by or serve as consultants to defense contractors at any time during a year at a pay rate of at least $25,000 and the defense contractor was awarded contracts by DOD during the preceding year that totaled at least $10,000,000, the former employee must file a report with the Secretary for a two-year period beginning on termination of federal service. The report will cover a period of two years before duty or service ended and will describe the type of work performed for the Department as well as a description of the duties and work performed for the Defense contractor. Administrative sanctions after an opportunity for an agency hearing can result in penalties up to $10,000.

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Generally, we prefer the use of civil penalties to enforce post-employment restrictions. Administrative proceedings are less cumbersome and more likely to be initiated than a formal criminal referral to the Department of Justice.

Finally, legislation in this field should be considered carefully. We should be prepared to explore and evaluate the effect of the DOD Authorization Act proposal before we embark on new legislation. In my view, however, the most important aspect of any ethics program is a commitment on the part of the head of the agency to ensure that a program works. Although it requires effort, commitment and manpower, through careful scrutinization of reporting forms, financial statement reviews, intensified briefings and educational training sessions, the agency can raise performance to such levels that outsiders will not presume that a Government official will ignore his or her official duties in order to curry favor with a contractor for purposes of obtaining post-federal employment.

I will be happy to answer any questions you may have.

Mr. ACKERMAN. We will suspend for 10 minutes so that the members of the subcommittee can go over and record their votes, and we will resume as soon as we all get back.

The subcommittee stands in recess.

[Recess taken.]

Mr. ACKERMAN. The subcommittee is called to order. I am sorry for the delay.

We will now hear from Kathleen A. Buck, who is the assistant general counsel for legal counsel of the Department of Defense.

Thank you for appearing before us today, and we anxiously await your testimony.

STATEMENT OF KATHLEEN A. BUCK, ASSISTANT GENERAL COUNSEL FOR LEGAL COUNSEL, DEPARTMENT OF DEFENSE, ACCOMPANIED BY DAVID W. REAM, ATTORNEY, OFFICE OF GENERAL COUNSEL

Ms. BUCK. Thank you very much, Mr. Chairman.

With your permission, I would like to submit my testimony for the record and present only a summary of that testimony.

Mr. ACKERMAN. We welcome that. Without objection, it is so ordered.

Ms. BUCK. Thank you.

Accompanying me today is Mr. David Ream from our office. He is an expert on standards of conduct matters. Again, with your permission, I think Mr. Ream might also have comments to add in the event you have questions today.

Mr. ACKERMAN. We certainly welcome Mr. Ream before us.

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We are glad to have you here. We heard anecdotally before of the fine work that you are doing. Welcome.

Ms. BUCK. Thank you.

We believe, Mr. Chairman, that it is essential to maintain the highest standards of integrity in the Government. We recognize that we need to improve enforcement of the rules, and we are planning an aggressive oversight program.

The new legislation that was passed in the Defense Authorization Act of 1986 changes the current law in several significant ways. We are in the process of issuing implementing regulations. Some of those provisions have a direct bearing on H.R. 2554.

The new provisions of the law establish additional restrictions regarding post-Government service employment. Essentially, Presidential appointees who are employees of DOD will be prohibited for 2 years from working for a defense contractor with whom they negotiated a contract or settled a claim. The penalty for violation of this provision by an individual is a prison term of up to 1 year or a fine up to $5,000. Action can also be taken against an offending defense contractor to obtain up to $50,000 in liquidated damages.

Former officers and employees of DOD must also comply with new reporting requirements. The reports must include a detailed description of the duties performed by the person for the contractor, a detailed description of similar duties performed within the final 2 years of DOD, and a statement of any disqualification action taken by that individual during the 2 final years with respect to any involvement in a contract involving that contractor.

The new provisions that were enacted also address the issue of written disqualifications and the reporting of employment contacts to the supervisor and the designated agency ethics official.

Another significant feature of the new law is the obligation of the Department to identify persons who fail to file reports and establish administrative procedures including hearings to weigh evidence, determine fault, and impose administrative penalties.

In conclusion, we would urge you to give us an opportunity to work with the laws that were passed only a few months ago before any new legislation would be passed on this subject area.

Thank you.

[The statement of Ms. Buck follows:]

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STATEMENT OF

KATHLEEN A. BUCK

ASSISTANT GENERAL COUNSEL FOR LEGAL COUNSEL

DEPARTMENT OF DEFENSE

We appreciate the opportunity to address standards of conduct issues for military personnel and civilian employees of the Department of Defense. I will address specific problems including the rules governing the employment of military personnel and civilian members of the Department of Defense after they leave government service. The movement of persons between government and industry or industry and government can significantly affect public perception of the integrity of government workers.

We believe that it is essential to maintain the highest standards of integrity. We recognize that we need to improve enforcement of the rules and our concerns relate to conduct both during and subsequent to government employment.

Within the Executive Branch the various laws governing standards of conduct are supplemented by Executive Order 11222 (May 8, 1965), Office of Personnel Management regulations (5 C.F.R. Part 735). Within the Department of Defense we have implementing regulations (32 C.F.R. Part 40), and the DoD components have also issued implementing regulations.

The purpose of this regulatory program, as stated in the Executive Order, is "that employees avoid any action, whether or

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not specifically prohibited . . . which might result in, or create the appearance of --

(1) using public office for private gain;

(2) giving preferential treatment to any organization or person;

(3) impeding government efficiency or economy;

(4) losing complete independence or impartiality of action;

(5) making a government decision outside official channels; or

(6) affecting adversely the confidence of the public in the integrity of the government."

Three current statutes relate to employment activities after government service:

1. 18 U.S.C. §207 places the following restrictions on departing officers and employees of DoD, including military personnel:

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- Permanent bar. A former government employee may never serve as another person's representative to the government on a case, contractual matter or other similar application or proceeding in which he or she participated "personally and substantially" while a government employee.

- Two year bar. For a period of two years after leaving federal service, the individual may not serve as another person's representative to the government on any particular matters involving a specific party or parties which were actually pending under the former employee's "official responsibility" in his or her last year of service. This two year bar is even broader with respect to designated "senior employees" who may not even assist in such representation by personal presence.

- Senior employee, one year bar. For one year after leaving federal service, senior employees may not represent anyone other than the United States before their former agency

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on any particular matter pending before or of substantial interest to the agency.

2. 37 U.S.C. §801(b) prohibits retired regular military officers from selling supplies or war materials to the Defense Department and related agencies for a period of three years after retirement.

3. 18 U.S.C. §281 prohibits retired regular military officers permanently from selling to their own former military departments.

Under legislation recently passed by the Congress (P.L. 99-145), DoD will have enforcement responsibility imposed upon the Secretary to identify persons who fail to file or whose reports indicate violation of any of the various applicable laws.

The Secretary is obligated to establish enforcement procedures. He must provide for hearings to weigh evidence, determine fault, and impose penalties. Penalties against contractors will be imposed using contractual means following the inclusion of appropriate clauses in their contracts with the Department. The new enforcement responsibilities and the vastly broadened reporting requirements will involve major commitments of resources.

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Implementation of the new provisions requires more than the publication of regulations. It also is necessary to design reporting forms and instructions; develop procedures to identify covered current and former officers and employees subject to the requirements; find and train personnel who will provide counseling and who will analyze the reports; program computers to generate lists of contractors whose contract volume brings them within the financiel scope of the law; and provide adequate notice and guidance to fully and fairly inform current and former personnel of their obligations.

In addition to the extensive work required by the new laws, several other measures are being taken to improve controls within the Department.

- Periodic reminders on specific problems will come from the Secretary of Defense or the Deputy Secretary of Defense.

- An ongoing program will be established within DoD to review standards of conduct programs in all components and share ideas and training materials or develop new training materials when appropriate.

- Two new Department of Defense directives are ready to be published for public comments.

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They implement the recent changes in the law and update the existing directives. Among other changes, we will encourage ethics counselors to memorialize in writing advice provided.

We in the Department of Defense are dedicated to the administration of the highest ethical standards. The committee may be assured of the personal concern of the Secretary.

The quest for high standards must not, however, divert attention from the mission of the Department nor impose such heavy burdens as to discourage qualified citizens from public service. The extensive reforms initiated by the Congress in the DoD Authorization Act for Fiscal Year 1986 must be tried before new prohibitions are added. I assure you that this Department will zealously carry out the desires of the Congress, as expressed in the recent legislation.

Mr. Chairman, as you know, the Congress recently passed the 1986 DoD Authorization Act (PL 99-145). We believe the new provisions in this Act address the principal objectives of H.R. 2554. We would, therefore, urge you to give us an opportunity to work with the laws passed a few months ago before more legislation is passed. For your reference, I am submitting with my statement an analysis of H.R. 2554, the recently enacted standards of conduct provisions in the Defense Authorization Act and the general conflict of interest laws at 18 U.S.C. §§201-209.

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COMPARISON OF H.R. 2554 TO EXISTING LAW

We have developed an analysis of H.R. 2554 in the context of existing law. Below is a table that gives a brief summary of the provisions of H.R. 2554 and compares them to existing law. Please note that to facilitate the comparison, the provisions of the bill and related laws are set out in broad outline. It is necessary to refer to actual text for the details.

In the table the bill will be compared with the provisions of the recently enacted DoD Authorization Act (PL 99-145) and the general conflict of interest laws, 18 U.S.C. §§201-209. They will be treated in the following order:

A. Proposed law - H.R. 2554
B. Recent Law - DoD Authorization Act, 1986 (PL 99-145)
C. Longstanding Laws - 18 U.S.C. §§201-209 and Ethics in Government Act of 1978, as amended (PL 95-521)

I. Agencies Subject to Coverage:

A. Proposed: H.R. 2554 - Department of Defense
B. Recent: PL 99-145 - Department of Defense
C. Longstanding: 18 U.S.C. §§201-209 and Ethics Act - Entire Federal Government

II. Prohibition on Employment After Leaving Government Service:

A. Proposed: H.R. 2554, Sec. 2(a) - Large numbers of persons working in the field of government contracting will be prevented, for twp years, from accepting employment with any firms whose contracts they dealt with during last two years of DoD service. No minimum grade level for coverage; prohibition extends to subsidiaries and affiliates. Criminal fines and imprisonment for violations by individuals; minimum penalty of $100,000 on employing contractor.

B. Recent: PL 99-145, Sec. 921. - No Presidential appointee may accept employment with defense contractor he or she had dealt with as the primary government representative in the negotiation or settlement of a contract. Ban extends two years after end of the conduct of official business with that contractor. Criminal fines and imprisonment for violations by individuals; minimum penalty of $50,000 on employing contractor.

C. Longstanding: 18 U.S.C. §207 - Does not forbid employment but instead limits representational activities where departee either participated personally and substantially in a particular matter involving specific parties or had such matters under his or her responsibility. In addition, there is a blanket

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restriction on all persons leaving "senior employee" positions, preventing them from engaging in all representational activities with their former agencies for a 1 year period after departure.

III. Reporting of Contacts with Potential Employer

A. Proposed: H.R. 2554, Sec. 2(c) - Any DoD officer or employee who contacts, for employment purposes, a Defense contractor with whom he or she has procurement responsibility must report that contact to the supervisor and to an agency ethics official and must disqualify himself or herself, in writing, from all procurement business concerning that contractor. No minimum grade level is specified. Failure to observe requirements subjects violator to the two year employment ban of 2(a), above.

B. Recent: PL 99-145, Sec. 923 (10 U.S.C. §2397a) - This section has a very similar reporting and disqualification requirement with two significant additions:

1. The requirements apply to civilians GS-11, or higher and military members, O-4 or higher.

2. Administrative enforcement responsibilities are given to the Secretary of Defense, permitting him to impose penalties on violators up to $10,000 and to bar from employment with that contractor for up to ten years.

C. Longstanding: 18 U.S.C. §208 - This is the basic "conflict of interest" law that forbids all government officers and employees from acting for the government on matters in which they, or their families, have financial interests. Criminal fines and imprisonment are provided for violation and are available in addition to penalties described above for failure to report or disqualify, when required.

There also is a reporting requirement that applies at present to persons who are subject to the disclosure provisions of the Ethics in Government Act of 1978. Employment arrangements concluded during employment with the Federal Government must be disclosed on the Standard Form 278, a publicly available form filed with the Designated Agency Ethics Official of each agency.

IV. Notice to Officers and Employees Leaving Government Service

A. Proposed: H.R. 2554, Sec. 2(d) - At the time of departure from DoD service, all DoD officers and employees who had worked in procurement during their past two years shall be advised of the requirements of this law and be given a list of the names of all contractors from which they may not accept compensation during the subsequent two years.

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B. Recent: PL 99-145 - No comparable provision.

C. Longstanding: 18 U.S.C. - No comparable provision.

V. Reports of Post-Government Employment

A. Proposed: H.R. 2554, Sec. 2(e) - DoD contractors must provide the Secretary of Defense an annual report listing name and other identifying information on each former DoD officer and employee receiving compensation from that contractor who had left a DoD procurement position within the past two years. The report will include a detailed description of that person's responsibilities while with DoD and responsibilities now being performed for the contractor. There is a fine of $10,000 for failure to report.

B. Recent: PL 99-145, Sec. 922 - This expands an existing reporting requirement (10 U.S.C. §2397) imposed on individuals. It applies to people who were at least GS-13 as civilians at DoD or military grade O-4 (Major/Lt Commander) and who receive a salary of at least $25,000 from a contractor holding $10,000,000 or more in DoD contracts. In the report the individual describes his or her DoD duties, duties for the contractor, any connection between the two, and any disqualification action taken, with respect to that employer, during last two years at DoD. The Secretary is authorized to require additional information and may administratively impose penalties for violation up to $10,000. The Secretary has the obligation to seek out those who fail to file.

C. Longstanding: Persons subject to the reporting provisions of the Ethics in Government Act, within 30 days of departure from Government service, must report their financial interests as of the date of departure. If employment arrangements had been made before departure, these would be included on the report. All three of the above report systems call for information that may lead to discovery of violations of $207 or $208 of title 18, U.S.C.

VI. Reports of Pre-Government Employment

A. Proposed: H.R. 2554 - No new reporting requirement.

B. Recent: PL 99-145 - No new reporting requirement, but Sec. 922 did revise and expand an existing one (10 U.S.C. §2397). Now persons who come into DoD at GS-13 level or above, who received, within the prior two years, an annual salary of $25,000 from a defense contractor with $10,000,000 or more per year in DoD contracts, must file a detailed report with the Department. The report includes a description of the work done for DoD as well as a description of the work formerly done on behalf of the contractor and how that related to DoD contracts.

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C. Longstanding: For many new Government officers and employees (those coming in at higher levels), the recently revised Authorization Act provisions largely duplicate the reporting requirements of the Ethics in Government Act.

OTHER STANDARDS OF CONDUCT LAWS

There are a variety of other laws and regulations that apply in the Standards of Conduct arena that have not been recently enacted and that have no counterpart in H.R. 2554. I will call attention to those summarized in my statement and mention just one more that is relevant to the current deliberations of your Committee:

Disclosure of Financial Interests

Title II of the Ethics in Government Act of 1978, as amended, established a Financial Disclosure Reporting System for the Executive Branch. In the comparison with H.R. 2554, mention was made of one aspect of this requirement, the reporting of prior employment for new officials and current employment arrangements made or held by current and departing officials. Pursuant to the Act, all civilian officials of the Department of Defense, above the grade of GS-15, and all military members above the rank of O-6 (Colonel/Captain), file detailed reports of financial interests upon assuming their duties, annually thereafter, and upon departure. These forms are reviewed by supervisors and by Standards of Conduct officials for potential conflict of interest problems and are available for public review.

In addition, all other personnel of the Department who hold positions that may have influence on the economic well-being of outside entities must also file financial reports. These forms are given similar review but are not available to the public.

PRINCIPAL CONCERNS REGARDING H.R. 2554

It may be helpful to review H.R. 2554 to identify specific problems. Before doing so, I emphasize the Department's concern with the general approach. We doubt that the bill would achieve its purposes. It would be a large administrative burden to manage, it would impose substantial additional costs on the already expensive procurement process, and it would deter qualified persons from entering service with the Department of Defense.

The comments that follow are keyed to specific provisions of the bill. In light of our view that recently enacted legislation (DoD Authorization Act, 1986, PL 99-145) obviates the need for additional legislation at this time, I will not suggest any specific language revision for this bill.

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Section 2. CONFLICT-OF-INTEREST IN DEFENSE PROCUREMENT.

(a) LIMITATIONS ON ACCEPTANCE OF COMPENSATION. This section would forbid any government contractor from employing a "former officer or employee of the Department of Defense . . . or a former or retired member of the Armed Forces" who had "significant responsibilities for a procurement function" related to that contractor within a two year period before departure from the government. The employment bar would run two years after separation from DoD service.

The bill does not define the term "significant responsibilities for a procurement function." Even routine and menial tasks may come within its scope if they are necessary contract administration procedures. For example, approval of each individual voucher would be "significant" if this step must be completed before the government may forward payment to a contractor. In the complex world of government procurement it may not be possible to draft a definition that would adequately and objectively identify those persons barred from receiving compensation from each of the thousands of DoD contractors.

(b) LIMITATIONS ON CONTRACTORS. A contractor providing compensation to a former DoD officer or employee in violation of this provision would face a minimum fine of $100,000. The risk of inadvertent violation of the Act would deter contractors from employing departing DoD personnel.

(c) REPORTING OF EMPLOYMENT CONTACTS. This provision is very similar to one found in the Department of Defense Authorization Act, 1986 (Sec. 923, PL 99-145). We are in the process of implementing the requirements of that Act.

(d) NOTICE TO OFFICERS AND EMPLOYEES LEAVING DOD SERVICE. It may not be possible to give each departing DoD officer and employee a list of all of the contractors from whom they are prohibited from accepting compensation. While some persons performing procurement functions may deal with only a handful of contractors, the vast majority, during any two year period, will be involved with hundreds of contractors.

Contract files, contract administration files, audit files and similar procurement-related records ordinarily reveal the identities of some of the government employees performing a related "procurement function," but current government record retention rules provide for their destruction soon after the conclusion of final contract close-out and postperformance audit periods. Because these documents would provide the major source of the government's necessary enforcement information, however, under H.R. 2554 large amounts of bulky records would have to be stored.

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Even this vast expansion of the record retention system would not reliably document the participation of a large segment of affected employees. Unless an entirely new bureaucracy were established specifically to record the name of every contractor as to which each DoD officer and employee performed a proscribed "procurement function," and unless such records were maintained on each employee for the full period of his or her disqualification, there are no present means available to make all of the necessary determinations called for by the bill. Records that currently are kept by contractor name or contract number would have to be duplicated in a parallel system under the names of DoD officers and employees. Instead of improving the procurement process, as intended, implementation of the legislative proposal would add a huge, costly, paperwork burden.

Individuals who are conscientious in their desire to avoid any possibility of violating the letter or spirit of this bill may need to keep voluminous and varied personal records concerning contracts that passed through their offices. For most persons handling acquisition duties for the government, the paperwork burden would be enormous. In addition, notwithstanding the two year pre-departure rule, the records would have to be kept for the current two year period during an entire career of twenty or more years. While some people may know when they have begun the last two years of their employment, most cannot be certain of that date. Programs are subject to cancellation. Employees may lose their jobs through reductions in force or because of changes in personal circumstances. Thus, the recordkeeping would be a continuing requirement throughout the entire career.

(d) CONTRACTOR REPORTS. This annual reporting requirement for contractors would be an expensive addition to overhead costs. The time and effort required to compile the report will be reflected in costs to the government. There are also limitations on the value of the reports themselves. Contractors will be able to identify those persons who came from government service. However, the individual job applicant or employee will be the source of all of the other information required for the annual reports. Contractors may be reluctant to risk liability when the information can only come from parties in interest. The burdens imposed by this requirement may give those contractors additional reasons to avoid hiring former DoD personnel.

The information included in these reports will largely duplicate that required from individual contractor employees by the Authorization Act requirement (Sec. 923).

(f) REVIEW BY DIRECTOR OF OFFICE OF GOVERNMENT ETHICS. We defer to the Director, Office of Government Ethics, for analysis of the merits of this provision.

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(g) COVERED POSITIONS. This bill includes within its ambit an extremely broad class of positions. It would be an extensive and complicated administrative burden to identify all of those positions each year. If the authority given to the Secretary of Defense permits the annual publication of criteria for selection, rather than the individual positions themselves, the statutory requirement will be somewhat less onerous.

(i) ADVISORY OPINIONS FROM OFFICE OF GOVERNMENT ETHICS. This provision would impose a significant workload on this Department. The ability of the Director of the Office of Government Ethics to respond adequately to requests for opinions will be affected by the quality and timeliness of data he requests from this Department. Compilation of such data, in many cases, will involve significant commitment of time and resources. With respect to other aspects of this provision, as applicable to the Office of Government Ethics, we again defer to the Director.

(k) DEFINITIONS. Several of the definitions, when read in connection with the substantive provisions of the bill, result in coverage that may be wider even than that contemplated by its sponsors. Before enactment of this bill it would be imperative that the terms be defined with more precision or, if the interpretations suggested below are not consistent with the intent of the drafters, that appropriate statements of the purpose be added to the bill or be explained in a committee report or statement on the floor.

Two examples will illustrate problems with the definitions:

(1) "Compensation." This term includes money "provided directly, indirectly, or through a third party." This would appear to preclude a former DoD official who is subject to the limitations from selling to the contractor. For example, he could not sell gasoline to the contractor for use in its trucks. He could not sell goods to a third party that might be resold to the contractor.

(2) "Contractor." The outer limits of this term are vague inasmuch as it includes "any parent, subsidiary, or affiliate thereof." The definition would appear to preclude employment with second or third tier subcontractors. A violation would appear to arise if a former DoD official subject to a postemployment bar was employed by a firm that became a subsidiary or affiliate of the contractor subsequent to his employment.

It is the conclusion of the Department of Defense that H.R. 2554 is unnecessarily broad and should not be adopted. Provisions recently enacted in the DoD Authorization Act were directed toward elimination of abuse in the acceptance of postgovernment employment. The elaborate safeguards and reporting procedures developed in that legislation should be tested for a reasonable period of time before additional postgovernment employment impediments are added. The unnecessary multiplication of remedies may so encumber the system as to interfere with sound management practices. There are reasons to believe that substantial costs associated with the implementation of this proposal would more than offset any savings in procurement dollars.

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Mr. ACKERMAN. Thank you very much for your statement.

The Justice Department stated in a recent letter to Congressman Bennett that the Defense Department is interpreting the new defense authorization restrictions too narrowly. Is the Defense Department working on regulations that are consistent with the Justice Department's interpretation?

Ms. BUCK. We have not issued our new regulations yet, and we are taking a look at that specific provision that you referred to defining presidential appointee. We will be consulting further with the Department of Justice on this, but we have not made any final decision on how we will interpret that provision.

We are reviewing the legislative history on both sides of the Congress, and I expect further consultations. I believe this matter will be resolved fairly soon. Then of course we will publish those regulations for comments so that anyone may comment, including Mr. Bennett, for example.

Mr. ACKERMAN. Thank you.

When would you expect to be publishing those regulations?

Ms. BUCK. I am very anxious to publish those regulations; I hope within the next couple of weeks.

Mr. ACKERMAN. The subcommittee would welcome a copy.

Ms. BUCK. Of course. Yes, sir, we will provide you with a copy before it is published in the Federal Register.

Mr. ACKERMAN. The General Accounting Office noted in its July 10, 1985, report on compliance with post-Government employment reporting requirements that only about 30 percent of those who should file such reports actually do so. Why has not the Department of Defense made a greater effort to ensure compliance with the existing reporting laws?

Ms. BUCK. My personal opinion is that we really have not had any mechanism that would enable us to do that. The provisions in the law on the reporting requirements have been changed. I think that with the new reporting requirements that were enacted in the authorization act we will have more detailed reporting and we will have a mechanism to monitor that situation, whereas before we really did not have any way of telling who should be reporting or who should not be reporting.

Dave, did you want to add anything to that?

Mr. REAM. Yes.

Mr. Chairman, one of the problems with the earlier requirement was that the information called for in the reports was very minimal. It asked which department the person had worked for and who the contractor was that he or she had gone to. It did not provide any information that was useful for law enforcement purposes, and we saw nothing in the act that gave the Department law enforcement responsibility.

When people failed to fill out a report that really would not give any valuable information, it did not seem to be appropriate to use resources to require more people to file that same report.

Now, as Ms. Buck has pointed out, those flaws have been corrected. The reports will now be very detailed. Plus, the Secretary has been given an affirmative responsibility to seek out those who do not file and to initiate action against them for failure to file.

Mr. ACKERMAN. How would you do that?

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Mr. REAM. Under the original provisions, only criminal penalties were available. Under the new provisions, there are administrative penalties that may be assessed by the Secretary. Plus, he is authorized to set up a hearing examiner and procedures to adjudicate the failure and determine whether or not it was willful. Criminal penalties may be in addition to that.

Mr. ACKERMAN. Do you require all branches of the military to send annual reminders to affected former employees, as the Air Force does?

Ms. BUCK. I think only the Air Force has that requirement. We do not have any requirement like that Department-wide.

Mr. ACKERMAN. Why not?

Mr. REAM. One of the problems we have there, Mr. Chairman, is that when people leave, unless they are retired military who are eligible to receive retirement pay, we do not have a procedure for keeping track of them. Once they are gone, they are gone.

We use the means that we have to notify people, principally by having them as well oriented as possible before they leave.

We also send letters at the present time to all of the contractors asking them to remind their employees to file the reports, but unless there is some additional authority not presently available—for example, if we had some way of matching the Social Security numbers of people who had left the Department with the list kept by the Social Security Administration, comparing them to the taxpayer numbers of the contractors—we would not have a very sure way of tracking those people down if they moved.

Mr. ACKERMAN. The question basically is sending reminders to the employees, not necessarily to the contractors. I would presume the Air Force, because they do it, have a mechanism to do so.

Mr. REAM. The Air Force, Mr. Chairman, reaches their retired military people. Those are the ones that they have been successful at. Others are mailed to the last known address, and a relatively small percentage actually are delivered to the former employee.

Mr. ACKERMAN. How do we know that?

Mr. REAM. Many of them come back. They are returned to the agency that sends them out with no known forwarding address.

Mr. ACKERMAN. You are saying that most people who retire from the Government do not leave a forwarding address?

Mr. REAM. Most people who leave the Government do not retire. Those who do retire we have ways of reaching, but there are many people—I think when we use the term "revolving door" we are probably most concerned about those who are in and out. Many of those move along and are not caught by our mailed reminders.

Mr. ACKERMAN. The question is basically a simple one, just getting back to basics. If somebody leaves the employ of the military, there is an address that most people have because they want other people to be able to get in touch with them, and they file a form with the post office that that is a forwarding address, or they live in the same place. A lot of people who retire, they do not just get up and move, and usually when people move they do leave a forwarding address. Whether they stay retired or go to work for a defense contractor or go to work in a supermarket really is not the point.

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Cannot we just send reminders to those people as to what the statute is, even if we do not have a way of tracking them?

Ms. BUCK. I think it would be feasible to follow the same practice DOD-wide that the Air Force does.

Mr. ACKERMAN. Yes. That is what I am asking.

Ms. BUCK. And that might be helpful to increase the number of people who are doing the required reports, and we are discussing that. And, as Dave mentioned, other ways, such as matching names, to try to put in place an effective mechanism that will work in looking at who is not complying with our reporting requirements.

Mr. ACKERMAN. When you get that mechanism in place or come to that conclusion or decide not to, would you share that with the subcommittee?

Ms. BUCK. Certainly.

Mr. ACKERMAN. Thank you. We appreciate that.

The subcommittee has obtained a copy of the Army Inspector General's report on its investigation of the DIVAD revolving door incidents. Are you familiar with that?

Ms. BUCK. Yes, sir; I am generally familiar with that report.

Mr. ACKERMAN. The Army IG report dated last April notes that two cases were referred to the Office of General Counsel for disposition and other appropriate action. Can you tell us what your office has done about those two cases, and will there be a public announcement about any action taken against those individuals?

Ms. BUCK. I believe the Office of General Counsel they are talking about is not the Office of General Counsel for the Defense Department, because we do not receive the report, but, rather, the Office of General Counsel of the Army. Ordinarily what happens if they would receive a report is that they would make recommendations on appropriate administrative action or referral of the matter to the Department of Justice.

In this case, there was a referral to the Department of Justice, and then of course the decision rests with the Department of Justice.

Mr. ACKERMAN. You are saying there was one referral?

Ms. BUCK. Yes.

Mr. ACKERMAN. Do you know the disposition of it?

Ms. BUCK. We have not received any further communication from the Department of Justice that I am aware of.

Mr. ACKERMAN. One would think if there was just one referral there could not be that much of a backlog.

Ms. BUCK. They, of course, receive referrals on cases from all the DOD components and the inspector general's office in another agency, so I think the Public Integrity Section of the Department of Justice probably has a number of cases going at any one time.

We are compiling some information on the disposition of cases that have been referred to the Department of Justice in the last few years. If you would like to receive that, I would be happy to provide that to you.

Mr. ACKERMAN. We would. Thank you.

[The information follows:]

During the period October 1982 until the present, 60 cases of Conflict of Interest were referred by DOD components/agencies to the Department of Justice for prose-

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cutional action. Of that number, the Department of Justice declined to prosecute 53. Four (4) of the remaining seven (7) cases terminated in a conviction.

Mr. ACKERMAN. Could you tell us in an average year how many conflict-of-interest cases that you receive are referred to the Justice Department for review?

Ms. BUCK. I think if you took an average, I do not believe there are more than, say, eight or nine cases that are actually referred to the Department of Justice.

Mr. ACKERMAN. How come?

Ms. BUCK. It depends on what problems are surfaced and whether we deem within the Department that the evidence that is present in any given case constitutes, in our judgment, a possible violation of a criminal law.

Mr. ACKERMAN. Would you suspect that that is an unusually low number of cases?

Ms. BUCK. It is my understanding that that is not a disproportionate number as compared to other agencies, even taking into consideration the number of employees that we have.

Mr. ACKERMAN. Is the assumption that because all of the numbers among the various agencies is approximately the same proportionately that therefore that is not an unusually low number?

Ms. BUCK. I do not have any other data to compare it to, so it is just my opinion, sir, but that is not to say that that includes all the administrative actions that have been taken.

Mr. ACKERMAN. Would it be a fair assumption to say that nobody in any agency is vigorously pursuing looking into these matters?

Ms. BUCK. No. I think that in fact, for example, within the Department of Defense, our Inspector General's Office has pursued these cases zealously and carefully.

Mr. ACKERMAN. You are talking about the eight or nine.

Ms. BUCK. Yes, sir. Per year, over the last few years, I believe our inspector general testified that there had been 23 cases referred over the last few years. That was when Mr. Vander Schaaf testified.

Mr. ACKERMAN. These are cases that you have received or cases that you are referring?

Ms. BUCK. Cases that we are referring.

Mr. ACKERMAN. What about cases that you have received?

Ms. BUCK. I think that is the number of cases that were actually referred to the Department of Justice, not just cases that were investigated. They may have investigated other cases.

Mr. ACKERMAN. How many cases were investigated?

Ms. BUCK. That I do not know, but I could check with the Inspector General's Office on that.

Mr. ACKERMAN. We would be very interested in that particular number.

[The information follows:]

Based on information received from the Office of Inspector General, DOD, since October 1982, 352 investigations have been closed involving the five subcategories of "Conflict of Interest." Those categories are (1) Financial Interest, (2) Employment Consideration, (3) Personal/Family Relationships, (4) Supplementation of Income, and (5) Representation of Non-Government Entity.

Of those, as I previously stated, 60 were referred to the Department of Justice, of which 53 were not prosecuted and four (4) terminated in a conviction.

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Mr. ACKERMAN. The Army inspector general's report on the DIVAD incident made a number of recommendations to avoid future conflict of interest, such as a "standard ethics training program at Army installations," expanded "preretirement briefings on ethics," and adding "a standard clause to contracts which would require contractors to avoid hiring personnel when their new position would create an actual or perceived conflict of interest with their former Government position."

Is the Department of Defense implementing any of these recommendations?

Ms. BUCK. I think that those recommendations were for within the Department of the Army, but I think that I can say that I would support at least some of those recommendations. I think that there is room for improvement in training people, and I think that is a good thing for the Department of Defense to always be looking at.

Mr. ACKERMAN. Will they be implemented? is the question.

Ms. BUCK. We are working on ideas like that all the time without a recommendation from the inspector general's office. That is an ongoing process in the Department.

Mr. ACKERMAN. I understand what you are saying, and I think you understand what I am saying. I think the answer is a little bit vague. The specific recommendations that were made by the Army Inspector General, those specific recommendations, are they being looked at, and will they be implemented?

Ms. BUCK. I would really have to go back to the Army on that. I could address our plans for DOD-wide. What specific things the Army has done in reference to the inspector general's recommendations I am not sure. I think overall the Army has a good program on standards of conduct, and they devote a lot of effort to that program. But they may have initiated some new programs as a result of those recommendations, and we could check that.

Mr. ACKERMAN. You are telling us then that this report, which was issued last April by the Inspector General of the Army, making recommendations that would avoid future conflicts of interest, really has not been looked at in specific?

Ms. BUCK. It has been looked at by the Army but not by the Office of the Secretary of Defense.

Mr. ACKERMAN. In your estimation, has the Army implemented them?

Ms. BUCK. The Army has not reported back to us on that, but they would not ordinarily do that.

Mr. ACKERMAN. They would not ordinarily report back to you or implement them?

Ms. BUCK. No. We have a decentralized program in the Department of Defense whereby the components basically have the responsibility to carry out the policy that is set forth in the directive which is issued by the Office of the Secretary of Defense, and they have the responsibility to be doing this on a day-to-day basis rather than the Office of the Secretary of Defense. We have a very small staff, but throughout the Department of Defense components we have many, many people working on standards of conduct programs on a day-to-day basis.

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Mr. ACKERMAN. So you have no responsibility for the implementation of suggestions made by inspectors general that would avoid violations of conflict of interest?

Ms. BUCK. We have not done oversight in those terms in the past.

Mr. ACKERMAN. Is oversight part of your responsibility?

Ms. BUCK. We have not looked upon oversight as part of our responsibility; no, sir.

The Inspector General's Office does engage in some oversight activities through their programs, and then within the military departments in the other defense components they have people who are designated who do this on a day-to-day basis.

Mr. ACKERMAN. Who is responsible then for implementation?

Ms. BUCK. The components of the Department are.

Mr. ACKERMAN. So the Army is responsible for its own implementation of the suggestions of their inspector general.

Ms. BUCK. That is correct.

Mr. ACKERMAN. And the Department of Defense has no oversight or responsibility for implementation?

Ms. BUCK. That is correct. That is the way it has worked, although we are going to set up an oversight committee—this a fairly recent decision—because of some of these standards-of-conduct problems.

Mr. ACKERMAN. What will your oversight committee do?

Ms. BUCK. We will look at general issues within the Department of Defense to avoid issuing inconsistent opinions on standards-of-conduct issues. We will look at training programs, attempts to exchange information. Let us say one component has developed a new film on standards of conduct for their employees. That film might be used in other defense components so that we do an overall better job on training our people.

Mr. ACKERMAN. If they came up with a film that you thought the Air Force was using that you wanted the Navy to use, would you implement that?

Ms. BUCK. Yes, sir.

Mr. ACKERMAN. Could you enforce that?

Ms. BUCK. I think that through the directive we could require that certain films be shown.

Mr. ACKERMAN. Why could you not enforce the recommendations of an inspector general if you thought they made sense?

Ms. BUCK. I think that we could.

Mr. ACKERMAN. That was what I was trying to solicit from you.

Ms. BUCK. I think that we can.

Mr. ACKERMAN. That is within your purview then?

Ms. BUCK. I think we have the power to do that through the Department of Defense directive.

Mr. ACKERMAN. Then it would be part of your prerogatives to see to it that those recommendations of the inspectors general, from whichever branch that made sense, would be implemented?

Ms. BUCK. I think that one of the responsibilities of the oversight committee would be to specifically look at inspector general reports, such as the one that you have, and examine whether the recommendations that have been made in that report not only should be implemented within that component but perhaps should be used

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Department of Defense-wide, because one component may have a problem which could crop up in another defense component.

Mr. ACKERMAN. Good.

Ms. BUCK. So I think that sharing of information is really a good idea.

Mr. ACKERMAN. Good. Then let me get back to the original question. I do not want to put words in your mouth, but you will then be looking at that inspector general report with the possible point in mind of seeing that it is implemented?

Ms. BUCK. I will make a commitment to do that promptly.

Mr. ACKERMAN. Thank you.

Who do you anticipate being on this oversight committee that you have just described to us?

Ms. BUCK. We would want to have representatives from the military departments of course. In all likelihood, this would be a legal committee primarily where the people who do the standards-of-conduct issues within the military component would be the designee to the committee, and, in addition to that, I think that there are other defense components, such as the Defense Logistics Agency, that definitely would want to participate and have a designated member of the committee.

Mr. ACKERMAN. Thank you.

I am curious about what constitutes a negotiation by a Federal employee.

The Army IG report on DIVAD states that one colonel sent his résumé to DIVAD contractors that he was overseeing and mentioned his plans to retire. The Army IG said that this was "clearly a form of negotiation." But when your office asked the Defense Department IG to investigate the rather widely reported case of the Pentagon's top procurement official sending out her résumés to 25 companies which she had official dealings with and even listing her office telephone number saying she planned to set up a consultant firm and was looking for clients, your office accepted that IG's decision that there was "no evidence of any discussion or expression of interest which we would construe as the beginning of negotiations."

Should the Army have a different definition of negotiations than the rest of the Defense Department, and should not Congress make sure that the same standards are applied in all cases?

Ms. BUCK. The term "negotiation" is not currently defined in the criminal law that deals with this subject. We have adopted what I think is Department-wide a very strict interpretation of the term "negotiation," and when we provide advice the term "negotiation" includes even sending out your résumé, unless you get a "no." Unless the discussions are terminated immediately, from my standpoint, that constitutes negotiation.

Now other lawyers, I think, would argue with me about what "negotiation" means in terms of the criminal laws, but in terms of our everyday advice we give what I consider to be a strict but appropriate interpretation of that term.

Mr. ACKERMAN. How did you come to accept that report that said no evidence existed after 25 résumés? You just said that your interpretation was that the sending out of a résumé constitutes the beginning of a negotiation?

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Ms. BUCK. Frankly, sir, that troubles me.

Mr. ACKERMAN. Me, too. That is why I brought that up.

Ms. BUCK. That individual that you are talking about I do not believe actually had procurement responsibilities over any of those individual contractors but had responsibilities in the overall rulemaking area. But I am very troubled about that issue, and I think that we could impose a Department of Defense-wide definition of "negotiation."

Mr. ACKERMAN. I think that would be very helpful. I think whether or not that person had responsibilities over a particular contractor that he or she was sending out résumés to, that as soon as one in such a position of being a or the top procurement official starts sending out as many as 25 résumés to 25 different contractors—that seems to be openly soliciting and putting oneself on the market. It was not just applying to one company that was obscure and had not done business under her purview. I would think common sense would dictate that one is readily marketing oneself on the open market. That word gets out on the street right away.

I think that your statement that you will be looking at that is certainly a very positive sign to this subcommittee. I thank you for that.

Thank you very much for appearing before us today. We appreciate your testimony and your very candid answers to our questions.

Ms. BUCK. Thank you.

Mr. ACKERMAN. Our final witness is Mr. Hugh E. Witt, the vice president, government liaison, of United Technologies Corp., and he is representing the Aerospace Industries Association here before us this morning.

Thank you for joining us, Mr. Witt.

STATEMENT OF HUGH E. WITT, AEROSPACE INDUSTRIES ASSOCIATION OF AMERICA

Mr. WITT. It is a pleasure to be here, sir,

Mr. ACKERMAN. Without objection, we will submit your entire statement for the record. If you would care to summarize it or make additional remarks, please feel free to do so.

Mr. WITT. I would be glad to. I would prefer just hitting some of the high points and then handling questions, if that is all right with you, Mr. Chairman.

Mr. ACKERMAN. Fine.

Mr. WITT. I would like to start out by saying that these issues have been debated more often with heat than light since I came to Washington to work for the Government 35 years ago.

I would like just to give you a little bit of background—the fact that I was a career civil service employee for 23 years, then a political appointee at OMB for 3 years, and for the last 9 years I have been with a firm that does significant Government contracting.

During my Government service I reported to nine Assistant Secretaries and two Directors of the Office of Management and Budget. So it has been a very interesting career, Mr. Chairman.

I do feel that all this noise over the revolving door is unwarranted. We have been talking about specific cases here and there. No one has any statistics to show how bad the problem is, and I am

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sorry to see that this shadow is cast over the literally thousands of people who have gone into the Government and from the Government back to the private sector with no hint of impropriety at all. The great majority of the people I work with in the Government and in industry have been dedicated, patriotic citizens, and they have been devoted to doing a good job for their country.

Gen. Larry Skantze, commander of the Air Force Systems Command, recently stated, "In every Air Force investigation of alleged misconduct by a retiring officer there has been no evidence of impropriety before or after retirement."

The Systems Command, as you probably know, Mr. Chairman, does most of the large dollar quantity buying for the Air Force. The big dollars, in effect, are spent by the Systems Command.

I recognize the fact that there will always be a handful of people who will be taking advantage of a situation to improve their personal reputation or fortune, but I think you will agree that there is no specific legislation on the books or being drafted or being considered by your subcommittee that will ever completely solve that problem.

This point was brought out by Ray Kline, president of the National Academy of Public Administration, in his testimony on January 29 before the House Judiciary Committee. He said that in view of the potential scope and the cost of H.R. 2554, the Defense Procurement Conflict of Interest Act, it is important to define just what the post-Federal employment problem is. He then stated that the academy had been unable to find "a clear articulation of the problem." He concluded that he must agree with the General Accounting Office reports made in 1978 and in 1985. Those reports, both of them, stated that the extent to which such a problem exists is not known, and I think that you have been hitting some of those points here this morning, Mr. Chairman.

At those same hearings, the deputy assistant attorney general of the Department of Justice stated that the Department has no empirical data demonstrating the necessity of H.R. 2554 or any provision like it.

Chairman Glickman repeatedly called for some evidence as to the magnitude of the problem, if there was one. He noted that only anecdotal accusations were being offered to his subcommittee.

The deputy inspector general of the Department of Defense during his testimony also stated that cases of conflict of interest do not represent "a problem of substantial proportions."

So we are back to the point that you made earlier, should we be writing extensive legislation which will require many implementing documents, which will require lots and lots of recordkeeping by industry and by the Government and by individual people who formerly worked for the Government? Should we lay all of that heavy burden on to the system over a perceived problem? It is a good question.

There is currently in place, as we know, a system of conflict of interest rules which are pretty strong and which we have already gone over.

Part of the problem of course does arise from the fact that when these cases come up the media grabs them immediately because they are good, "sexy" cases, so to speak, and they play them up.

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The media does not have a habit of trying to keep such cases in perspective with the total number of people involved.

Adlai Stevenson once said that an editor is a man who separates the wheat from the chaff and then proceeds to print the chaff.

At a National Contract Management Association meeting last year we had a panel of media people, and one of the reporters stated very bluntly, "Good news is not news."

It is as though when the Abscam question came up on the Congress, I do not think anyone accused everybody in the Congress of being guilty of an Abscam problem, but the media sure did play up the fact that a Congressman and Senator were involved in Abscam. My point is that this issue must be, in my opinion, kept very carefully in total perspective.

When I look at the list of procurement functions that are covered under procurement in H.R. 2554 it is a staggering list. Any action relating to the contract, including negotiating, awarding, administering, approving contract changes, cost analysis, quality assurance, operational development testing, technical advice or recommendation, approval of payment, contractor selection, budgeting, auditing, or management of the procurement program—management of the program. What is not a form of management? Fantastic.

You would be involved with literally hundreds of job types and thousands and thousands of employees involved throughout the whole procurement system in the DOD who would be involved in meeting these strictures. It would be an awesome task and, I would submit, obviously a very subjective task to determine what positions were currently performing those functions and what the functions were.

I could almost guarantee that the responsible officials would be very conservative on this issue—that is, be on the safe side—and they would identify positions far down in the management ladder as significant, to be on the safe side. So we would have a terrific list of functions supported by an extensive array of positions.

The reports called for by H.R. 2554 would be voluminous and detailed and, as the DOD statement this morning said, very expensive.

I will go quickly here so we can get to the questions.

You mentioned the question of, to what extent does the revolving door assist? I can say, based on my 26 years in the Federal Government and working for people coming from industry, it was very important.

The big bureaucracies have a tendency to get set in their ways, and they do not want to do things in a new and different way. It is very important to see these people from industry coming in and making very substantive contributions to the way the Government does its business, very important, sir.

We must not, however, cut off the avenues by which these officials can return to the private sector. They spend years of productive work getting ready to move up the ladder and assume a very important position. They come into the Government to help out for a few years. Then suddenly they are told they cannot go back to those jobs that they worked so hard to prepare themselves for. You

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are going to cut off this avenue for people to come into the Government.

Dick Delauer, the former Under Secretary of Defense, was asked why he was not filling certain positions in the Pentagon, and he said under the ground rules now extant he could hire only young executives with very limited experience or much older executives, such as himself, who were retiring from industry and were willing to take on the rigors of Government employment as a gesture of gratitude to their country.

So you would be eliminating the big middle corps of management executives that the Government really needs to come in and assist them.

It is ironic that analyses of some of our defense problems today have emphasized the acute need for high-caliber personnel within the military services. I am convinced, Mr. Chairman, that H.R. 2554 would make that problem much more severe than it is now. I also suggest that we had better do the best we can to make use of the best people available.

I noted that John Gardner, who was in and out of Government several times, stated, "Ours is a difficult and exhilarating form of government,"—and I can guarantee that is true—very exhilarating—"not for the faint of heart, not for the tidy-minded, and in these days of complexity not for the stupid."

That basically concludes my prepared statement, Mr. Chairman.

I did notice that in the statement which was submitted by the Department of Justice at the earlier hearings in January, they were talking about what had shown up under the section 207 violations, and the Department of Justice, on page 8 of his testimony, the spokesman said there are no substantial law enforcement problems. He said the rather sparse number of section 207 investigations and prosecutions reported to the Executive Office for U.S. Attorneys by the U.S. attorneys for the period 1980 through 1985, a 5-year period, would suggest that offenses occur very infrequently. In that 5-year period, 45 matters involving section 207 issues were reported to the U.S. attorneys as closed without prosecution. Nine of the declinations resulted from referrals which were made prior to 1980. In the same period, five section 207 prosecutions were initiated; three of these prosecutions resulted in guilty pleas, one prosecution resulted in an acquittal, and the fifth prosecution was dismissed at the request of the U.S. attorney.

So we are talking about five 207 prosecutions being initiated in a 5-year period. I submit, Mr. Chairman, that one a year, when you are talking about thousands of people going in and out of the revolving door, is not a very substantial number.

I notice that the Public Integrity Section handled two of the referrals. They turned out to be Department of Justice attorneys, which is rather interesting, I think.

I am ready for any kind of questions you would like, Mr. Chairman, at this point.

Mr. ACKERMAN. Thank you very much, Mr. Witt, for your testimony. Your whole statement will be made a part of the record.

[The statement of Mr. Witt follows:]

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STATEMENT OF HUGH E. WITT, VICE PRESIDENT, GOVERNMENT LIAISON, UNITED TECHNOLOGIES CORP. AND REPRESENTING AEROSPACE INDUSTRIES ASSOCIATION

Mr. Chairman, members of the subcommittee, my name is Hugh E. Witt. I am vice president, government liaison, for United Technologies Corporation and am representing the Aerospace Industries Association (AIA). The Aerospace Industries Association represents the Nation's major manufacturers of aircraft, aircraft engines, helicopters, spacecraft, missiles, space launch vehicles, and their related components and equipment. I appreciate the opportunity to be here today to discuss the issues surrounding the employment by the Government of persons from the private sector and employment by the private sector of persons who have been employed by the Government. These issues have been debated, often with more heat than light, since I came to Washington to work for the Government 35 years ago.

I am in a somewhat unique position to appear before you today since I was a member of the Defense Department career civil service for 23 years, then a political appointee at the Office of Management & Budget for 3 years, and have been employed for the past 9 years by a firm which does significant Government contracting. During My Government service, I reported to 9 assistant secretaries, and two directors of the Office of Management & Budget.

Based on my experience and observation, I conclude that much of the alarm raised over the so-called "revolving door" is unwarranted. The relatively few instances where a strong appearance of conflict-of-interest appears should not be allowed to cast a shadow over the thousands of persons who have moved from the private to the public sector, and vice-versa, with no hint of impropriety.

I have had the pleasure of working with both civilian and military employees of the Department of Defense, as well as other Federal agencies. The great majority have proven to be dedicated, patriotic citizens devoted to doing a good job for their country. General Larry Skantze, Commander of the Air Force Systems Command, recently stated that: "In every Air Force investigation of alleged misconduct by a retiring officer, there has been no evidence of impropriety before or after retirement."

Admittedly, human nature being what it is, there will always be a handful of people who take advantage of a situation to improve their personal reputation or fortune. I think you will agree that no specific legislation on the books, or being drafted, will ever completely solve that problem.

I mentioned earlier the relatively few instances of apparent conflict of interest. This point was brought out by Ray Kline, President of the National Academy of Public Administration, in his testimony on January 29 of this year before the House Judiciary Committee.

Mr. Kline said, that in view of the potential scope and cost of H.R. 2554, the Defense Procurement Conflict of Interest Act, it is important to define just what the post-Federal employment problem is. He then stated that the academy had been unable to find "a clear articulation of the problem." He concluded that he must agree with the General Accounting Office reports made in 1978 and 1985. Those reports stated that the extent to which such a problem exists is not known.

At those same hearings, the Deputy assistant attorney general of the Department of Justice, stated that the Department has no empirical data demonstrating the necessity of H.R. 2554 or any provision like it.

Chairman Glickman, at the January hearings, repeatedly called for some evidence as to the magnitude of the problem, if there was one. He noted that only "anecdotal" accusations were being offered to his subcommittee.

I encourage this subcommittee to contemplate such statements thoughtfully when considering legislation such as H.R. 2554.

There is currently in place a system of statutory conflict of interest rules which applies to Federal employees and which is backed by criminal penalties. These statutes disqualify a Government employee from representing a contractor on issues related to contracts where he participated personally and substantially as a Government employee. These statues also require that a Government employee be disqualified from acting whenever a personal financial interest is involved, including any arrangement concerning future employment. Violations can result in imprisonment and fines. Retired military officers are further restricted with respect to selling and claims.

Now, let's consider H.R. 2554 more specifically, and some of the problems it raises. H.R. 2554 was adopted by the Committee on Armed Services as an amendment to the fiscal year 1986 DOD authorization bill and subsequently rejected by the authorization conferees.

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H.R. 2554 singles out DOD officers and employees and creates a conclusive presumption that certain kinds of employment within 2 years is a conflict of interest. This 2-year disqualification, without regard to how remote the job may be from DOD's business, is much too broad and unfairly stigmatizes DOD personnel.

As I understand H.R. 2554, the Secretary of Defense would be responsible for producing a list of procurement functions and the positions currently performing such functions. This list would constitute the basis for a decision by the Secretary as to whether a departing employee had had a "significant responsibility for a procurement function" and thus would be prohibited from taking compensation from a firm, or list of firms, presented to him by the Department of Defense upon the employee's departure.

The employee's future career opportunities would thus be affected by the decisions of those DOD officials responsible for producing the list of procurement functions for the Secretary. Such officials must decide what the words "significant responsibilities," as used in the legislation, mean. How significant must a responsibility be?

In addition, the words "procurement function" raise a number of questions. The definition in H.R. 2554 says, with respect to a contract, "any acquisition action relating to the contract, including negotiating, awarding, administering, approving contract changes, costs analyses, quality assurance, operational and developmental testing, technical advice or recommendation, approval of payment, contractor selection, budgeting, auditing under the contract, or management of the procurement program." I submit that that is a very exhaustive list. Literally hundreds of job types and thousands of employees could be covered by one contract.

Those officials developing the list would indeed have an awesome task, and obviously a subjective one. They would have to review the 13 functions listed above to decide which employee positions were "currently performing" those functions. Then they would have to decide which of those positions were "significant." Based on my experience, I would almost guarantee the responsible officials to be very conservative on this issue; that is, on the "safe" side. This means they would identify positions far down the management ladder as "significant." Result: The list of functions would be supported by an extensive array of positions.

For instance, the bill contains such sweeping terms as "any acquisition action relating to the contract," and "management of the procurement program." This language invites, in turn, extremely broad coverage of functions and positions in any list to be forwarded to the Congress.

I would also note that, due to differences in the military services' concepts of systems program office management and composition, the function and position lists forwarded to the Congress would not be compatible across the DOD for purposes of comparison. As a former Pentagon employee who labored to comply with some of the extensive reporting requirements levied on the Department of Defense, I want to emphasize that the reports called for by H.R. 2554 would be voluminous and detailed, adding to an ever-lengthening list.

In any effort to set reasonable boundaries on the issue, one should try to first envision the "worst case." I would identify such a case as a DOD program manager for a major weapon system leaving his position one day and going to work for the contractor who produces the system the next day. Yet an argument can be made that even such an obvious case should be acceptable if the DOD employee were hired by a subsidiary of the firm, and that subsidiary does no DOD, or even no Government, business. Only the perception of conflict-of-interest would remain as a deterrent.

I personally would have no problem with legislation which prohibited the "worst case" type of "revolving door."

Based upon my experience I can see the need to have "appointive" people from the private sector brought into the Government. First, the President must have his representatives at the top agency positions, such as cabinet officers, as well as at certain key positions reporting to them. Considering the tremendous size of the Federal bureaucracy, there are in fact relatively few of these positions. Second, I would like to emphasize that the Government needs the new ideas and concepts these people bring with them.

At the same time, we must not cut off the avenues by which these officials return to the private sector. Recruiting good, knowledgeable people from commerce and industry is a challenging task, considering the Government pay scales and the workload the appointive officials must carry, without making it difficult for them to return to the type of work they have spent their productive years preparing for.

I call your attention to testimony by former Under Secretary of Defense Richard Delauer. When asked why he was not filling certain positions in the Pentagon he replied that, with the ground rules now extant, he could hire only young executives

with very limited experience, or older executives such as himself who were retiring from industry and were willing to take on the rigors of Government employment as a gesture of gratitude to their country. This demonstrates very graphically one of the problems we are discussing today.

I notice that this problem has been at least partly addressed in H.R. 2554. That bill allows the Secretary of Defense to grant an exemption where the duties of a position would involve significant responsibilities for procurement functions with so many contractors that implementation would seriously hamper the department's ability to obtain a qualified individual to fill the vacancy.

It is ironic that analyses of some of today's defense problems, such as pricing and management of spare parts, have emphasized the acute need for high caliber personnel within the military services. H.R. 2554 would make that problem more severe.

As a report prepared for President-elect John F. Kennedy noted: "The prime key to the improvement of the administrative process is the selection of qualified personnel. Good men can make poor laws workable; poor men will wreak havoc with good laws."

In my view, the interchange of knowledge, ideas, management techniques; and indeed, philosophy, which accompanies the so-called "revolving door" is good for the Government and good for our industrial society. Neither side has all the talent, nor the brains. With the serious problems our nation is facing, we had better do all we can to make the best possible use of the best people available.

Former cabinet member John Gardner once stated: "Ours is a difficult and exhilarating form of government, not for the faint of heart, not for the tidy-minded, and in these days of complexity not for the stupid. We need men and women who can bring to Government the highest order of intellect, social motivations sturdy enough to pursue good purposes despite setbacks and resilience of spirit equal to the frustrations of public life."

That concludes my prepared statement, Mr. Chairman. I will be glad to respond to any questions you or members of the subcommittee may have.

Mr. ACKERMAN. Congressman Bennett and Congresswoman Boxer who were here earlier both had to leave. I think you prefaced your statement by saying this type of legislation would cast a shadow upon the thousands upon thousands of Federal employees who have not done anything in the way of conflict of interest.

I know that certainly it is not their intent, nor do I read this legislation as in any way casting a shadow of doubt. The way I see it and I think the way they see it, as I understood them to say, rather than cast a shadow, that it basically removes a cloud that has been cast upon so many by the actions of so few.

Those of us who are in Congress have reporting requirements and responsibilities also, and that is not necessarily because people do things wrong, it is because the public would like to hold its Government and those who represent it and those who work for it up to a fairly high standard and to know what is going on. That does not necessarily mean that people are doing things that they should not be doing or that elected officials or public employees or Government workers are corrupt or unethical or committing conflicts of interest. I think the requirement of legislation, the intent of the sponsors, was certainly not to cast any doubt upon the integrity of the Federal workforce.

You were good enough to reach back in history and quote a good Democrat, Adlai Stevenson, so far as separating the wheat from the chaff, as newspapers sometimes, I guess, do, and then printing the chaff. Those of us who are in public life certainly are the recipients of that kind of largesse, having benefited from that chaff by the shovelful at times. Nonetheless, I would reach a little further back into history and quote Thomas Jefferson, who said, "Had I the choice between a government without newspapers or newspa-

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pers without a government, I certainly would choose the latter." Despite the fact of the opinions of some that the newspapers might be nitpicking or chaff printing in calling to the public's attention those cases where people are committing unscrupulous or unethical acts, that is a necessary part of the democratic process, and I would hate to think of where we might be without them.

Mr. WITT. I submit, Mr. Chairman, though, that Thomas Jefferson also said that no more good must be attempted than the public can bear, and it seems to me that we are laying on under this bill a fantastic amount of regulation which will have to be implemented throughout the system. The amount of recordkeeping would be absolutely staggering. Anyone in the Government would have to keep track of every contract and contractor he dealt with the last 2 years of his Government service.

I never was sure during my 26 years when I was going to be leaving the Government service. So every year I would have had to consider as part of the last 2 years, which means that anyone in the Government service for 26 years, as I was, would have had to keep track of every single contract, every single contractor, that he had anything to do with for 26 years. That is the way it reads. There is no way we could avoid that.

Mr. ACKERMAN. If I understand the legislation, it requires only the last 2 years.

Mr. WITT. That is right. But I submit, sir, that not knowing when you are going to leave, you have to consider every year as a part of the last two years. How would you know when to start keeping records?

Mr. ACKERMAN. I would think that one could look back on the last 2 years.

Mr. WITT. Which means that you would have to keep records for every single year, to be on the safe side—right?

Mr. ACKERMAN. I would think so.

Mr. WITT. OK. So I would have had to keep 26 years' worth of records, and all those millions of employees are going to have to start keeping every single record of every contract and every contractor every single year that they are employed by the U.S. Government. That is what the law says. There is no way to avoid it.

Ms. Buck's attachment to her statement says that they would have to keep records which now they were planning to throw away. They would have to keep records to protect themselves in the Department of Defense, sir.

Mr. ACKERMAN. That is accurate. What is the point?

Mr. WITT. My point is, you would start keeping tons and tons of records just to protect yourself in the Government, and each employee would keep records for every single day that he was in the Government; he would have to keep a record of what he did and which contractor he talked with.

I was Deputy Assistant Secretary of the Air Force——

Mr. ACKERMAN. I do not think there is a requirement that after you go into year 3 that you keep the records of year 1. It is only that you be able to go back 2 years.

So if one were keeping records continuously, you would not have 26 years' worth of records, you would just have records for the last 2, if you are worried about where to store the records.

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Mr. WITT. All I am saying is, I would have to keep the records from the very beginning.

Mr. ACKERMAN. That is a fair assumption, but you would only have to keep 2 years' worth.

Mr. WITT. That is right; I am not arguing with that; but you are going to have the millions of people in the Government who would have anything to do with a contract or a contractor have to keep records, starting from the day he was hired—right?

Mr. ACKERMAN. You understand the requirement, yes.

Mr. WITT. Sure; that is right.

On page 5 of her attachment here, it says, "Contract files, contract administration files, audit files, and similar procurement-related records ordinarily reveal the identity of some of the Government employees performing a procurement function," and so forth. But current Government record retention rules provide for their destruction. Because these documents would provide the major source of the Government's necessary enforcement information, however, under H.R. 2554 "large amounts of bulky records would have to be so stored."

Mr. ACKERMAN. That is accurate, but I do not understand why that is a problem.

Mr. WITT. Practically every law that the Congress passes dealing with procurement says we want to quit having so many records, quit having so many forms to fill in; we are making Government almost impossible for the small businessman, and on, and on, and on; and here this bill, to get the five people that the Department of Justice got, says you are going to start keeping all the records from here on out.

Mr. ACKERMAN. Are you concerned about the business people keeping the records?

Mr. WITT. Both.

Mr. ACKERMAN. Or the Government keeping the records?

Mr. WITT. Both.

Mr. ACKERMAN. Or the individuals keeping the records?

Mr. WITT. Both. The contractor, when he hires somebody, he has to ask that man, "Did you ever work for the Defense Department?"

Mr. ACKERMAN. Do you think that is a good idea?

Mr. WITT. If he is going to be employed in any sensitive spot, I think it is a very good idea, but I am just saying that then he is at the mercy of that man's statement, "Yes, I did work for the Government," or, "No, I did not."

Mr. ACKERMAN. And should he keep that as a record?

Mr. WITT. He will have to.

Mr. ACKERMAN. Is that a good idea?

Mr. WITT. I do not see a reason for it. But he will be fined $100,000 if that man tells him a lie. If the man says, "No, I did not work for the Defense Department," and the guy does not want to take the trouble to go all the way back and check it out, he has hired a man who used to work for the Defense Department, and he did not file a report as this thing calls for.

I am just saying that this thing is a little more complicated once you get into it.

Mr. ACKERMAN. Is it knowingly filing a false report?

Mr. WITT. Sir?

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Mr. ACKERMAN. Is it knowingly filing a false report that is the violation?

Mr. WITT. It just says if he files a false report. I will have to go back and look at the——

Mr. ACKERMAN. Yes, I wish you would. I do not necessarily believe that that is accurate, if somebody misleads you, that you are guilty of a crime.

Mr. WITT. Any individual voucher. There are millions of vouchers involved in the procurement system.

The DOD says approval of each individual voucher could be a significant procurement action.

Mr. ACKERMAN. Could be.

Mr. WITT. They say "would be"—pardon me—"would be significant. In the complex world of Government procurement, it may not be possible to"—

Mr. ACKERMAN. Whose statement are you reading from?

Mr. WITT. The Department of Defense. I am not making it up, sir. It is the Department of Defense's statement.

I am just submitting that this is a very big, complicated, and very, very expensive operation under H.R. 2554.

Mr. ACKERMAN. We understand that it is expensive. The price of liberty is eternal vigilance. We do not necessarily want to do away with our court system and criminal justice system just because it takes money to catch people who are in violation of the statutes. In order to prove that there is a violation, there has to be a case to be made, and you have to have some records to base it on.

Mr. WITT. All I am asking, sir, is, I want to make sure that we do not have an answer and we are out running around hunting for a problem.

Mr. ACKERMAN. If I could just call your attention to the law, on page 2, number 2, in the Armed Services Report, "Such a contract shall also provide that if the contractor knowingly violates a contract provision." The operative word there is "knowingly."

Mr. WITT. Violates what? Violates the bill?

Mr. ACKERMAN. Yes. That is on page 2. We will be glad to give you a copy.

Mr. WITT. I have got it.

Mr. ACKERMAN. I mean somebody is not necessarily unethical if they do something that they do not know about, just passing on information.

Mr. WITT. In today's environment, Mr. Chairman, a contractor has to be very cautious, and I think that if there was any question at all he would not hire the man, which makes it more and more difficult to entice people to come to work for the Government and turn around and go back again.

Mr. ACKERMAN. We would think that if there was any question about the ethics of hiring somebody that he would be very careful.

Mr. WITT. I did not know whether you had, in your efforts to keep this in perspective, sir, analyzed thoroughly the tremendous cost of this bill in time, and in people, and in money.

Mr. ACKERMAN. We have heard from some people as to the magnitude and the scope.

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Mr. WITT. I just wanted to mention that. That had not been discussed at all today, sir, and I just want to bring it to your attention, if it has not been brought to your attention.

Mr. ACKERMAN. We do appreciate that.

Mr. WITT. I speak from experience, sir. I was on the other side for 26 years.

Mr. ACKERMAN. We thank you very much for your testimony and for sharing the wisdom of some of those 26 years with us.

Mr. WITT. I appreciate the opportunity to appear, sir.

Mr. ACKERMAN. Thank you very, very much for coming.

There being no further witnesses, the subcommittee stands adjourned.

[Whereupon, at 1:25 p.m., the subcommittee was adjourned.]

[The following statement was received for the record:]

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TESTIMONY OF ANN McBRIDE

SENIOR VICE PRESIDENT

COMMON CAUSE

Mr. Chairman and Members of the Subcommittee, I appreciate this opportunity to appear on behalf of Common Cause before the Subcommittee on Human Resources on H.R. 2554, the "Defense Procurement Conflict of Interest Act." I am Senior Vice President of Common Cause, a citizens' organization of 250,000 members.

We thank this subcommittee for undertaking this review of post-employment and revolving door restrictions. Today's hearing presents an important opportunity to consider solutions to the serious revolving door problems in the military procurement process.

A long-standing problem with the military procurement process has been the steady movement of personnel who oversee a military program or a particular weapons system to jobs with the defense contractor who is responsible for that program or who builds that weapon. Known as the "revolving door," this practice raises serious questions about conflicts of interest in the military procurement process. Last year alone, the Pentagon budgeted about $100 billion for procurement.

My statement covers four areas: first, an examination of revolving door problems; second, the inadequacy of current post-employment restrictions; third, recent congressional action; and fourth, a look at the opportunities for reform.

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I. Problems with the Revolving Door

The problem with the revolving door is a serious one which damages citizen confidence in the integrity of our government, erodes the confidence of government employees and the public in weapons procurement management, and may undermine our national defense.

Over the last few years, congressional testimony, government studies and news accounts have documented repeated conflict of interest with personnel in the Pentagon procurement process -- instances of government employees who have gone to work for contractors over whom they had official responsibility while in government.

The problems with the revolving door are not new nor are they limited to the Department of Defense. But it is at the Department of Defense (DoD) -- which lets some 80% of government contracts -- where the situation is particularly acute.

Representative Bill Nichols (D-AL) cited these recent examples at a House hearing last spring:

> . . . three former general officers of the Army, who were involved in the Divad program have been employed by Ford Aerospace, the prime contractor for the system; the former Commander of the Air Force Plant Representative Office at Hughes Aircraft, upon his retirement from the military went to work for the company; the former Commander of the Air Force Plant Representative Office at General Dynamics, Fort Worth, Texas, was employed by the contractor after he retired; and the colonel who managed the Air Force competition between General Electric and Pratt Whitney for jet engines was hired by General Electric after his retirement from the Air Force.

Although it is clear that a serious problem exists, its full extent is still not known. While a 1969 law has required retired

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officers and civilians to file annual reports listing any defense industry employment for up to four years after leaving the Pentagon, it neither contains adequate data nor has it been widely observed by former officials. For example, a 1985 General Accounting Office study of a sampling of the ranks of some 58,000 retired senior Defense Department military and civilian officials indicated that 70 percent of those who switched to defense industry jobs did not file the required annual reports. Senate Governmental Affairs Committee Chairman William V. Roth, Jr. (R-DE) charged that the study "indicates a blatant disregard by former Pentagon employees for the seriousness of the revolving door problem."

Movement back and forth between defense contractors and the Pentagon is not by itself a reason to close the revolving door. The central question is those transfers that raise conflict of interest questions. Two separate studies indicate that these cases may be considerable. For example, a 1975 Council on Economic Priorities (CEP) report found that many former DoD employees had gone to work for military contractors after playing an active role in negotiating defense contracts with those same contractors. The study concluded that more than "25 percent of all former military personnel hired by large contractors who have filed reports are in positions that indicate a possible conflict." A 1981 CEP study estimated "that 24 percent of civilian transfers placed personnel in a position which constituted an 'appearance of potential conflict of interest.'"

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The result of this situation is threefold. First, some Pentagon employees may not be as tough as they should be in supervising contractors' performance. In other words, future employment may depend on accommodating contractors rather than challenging them. Clearly the current system creates the temptation for Pentagon officials not to fulfill their job responsibilities to the letter of the law in anticipation of future employment. As Air Force contracting official Ompal S. Chauhan said in 1985 testimony:

> The process begins at least two or three years prior to the separation from government service and the manager becomes increasingly soft on the contractor . . . . He must do things which his future employers like and prove his worthiness for his new job. Consciously or unconsciously the thought of future security begins to affect him. He begins to think more about his future employer than his current one.

In the same vein, Senator William Proxmire (D-WI) has stated, "A negotiator may understand the problems of the contractor too well and not drive a hard bargain. A weapons tester may overlook flaws. An auditor may not press a contractor on inconsistencies in financial data."

Second, public confidence in the integrity of the government procurement process is threatened. According to retired Colonel Howard Lee Bodenhamer, who headed the Air Force's plant representative office at the General Dynamics plant in Forth Worth, "You wear the rank of colonel or commander, and literally the next day, you're working for the same contractor at the same plant -- and they expect the American people to believe that we're not all in the same bed together?" Air Force Captain Jeffrey P. Rohm says the revolving door practice "appears infinitely more

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dangerous and more likely to be an impropriety in the eyes of the public, than the acceptance of token gratuities [which are] clearly prohibited" by Air Force regulations.

Finally, the morale of Pentagon employees is dampened when they see former colleagues take jobs with the contractor whose work they oversaw or whose product they purchased while serving in government. For example, in 1983, Air Force Contract Management Division Colonel Jack Finder told an Office of Government Ethics official that the "large turnover" of Air Force personnel who work as plant representatives for the military service and then join the companies they supervised is "devastating to the ethics program because of the appearance of conflict of interest alone." Air Force "employees openly discuss what the former employee has done over the past few years for the contractor to obtain the new job and wonder why they should be so ethical." Colonel Bodenhamer told The St. Louis Post-Dispatch recently that as a result of revolving door transfers, some of his staff may have been reluctant to call problems to his attention. "If you think there's an old-boy system, you're not going to go out and risk your career or job," he said.

A succinct summary of the revolving door problem was stated by Dr. Gordon Adams, Director of the Defense Budget Project, in recent congressional testimony, "[t]he Department of Defense should not be a personnel agency for its contractors: its job is to provide for our national security."

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II. Current Post-employment Restrictions

Title V of the 1978 Ethics in Government Act contains restrictions on post-government employment for certain federal employees. These provisions impose three types of prohibitions on lobbying activities. Violations of all three are subject to criminal penalties under 18 U.S.C. §207.

First, former officials are forever barred from representing anyone other than the United States before a federal court or agency with respect to a "particular matter involving a specific party or parties" in which they ever participated "personally or substantially" as government employees.

Second, former employees who had "official responsibility" for particular matters are barred for a period of two years from representing outside parties on such matters before the federal government or courts. This restriction applies to particular matters that were under a former official's responsibility during his or her final year in the responsible position.

Third, "senior employees" are subject to a one-year "quarantine" that prohibits any communication with their former agency on behalf of anyone other than the U.S. with the intent to influence on any matter, whether or not the former official participated in the matter.

These priorities do not restrict where a former government official can go to work. Rather, they restrict certain post-federal activities in order to prevent the former official from using contracts and knowledge gained from public service to

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influence government decisions on behalf of his or her private sector employee.

While these restrictions are important, they do not fully address the revolving door problem and are not adequately enforced. Data from a November 1984 Common Cause report, Bureaucratic Orphans: The Administration of Government Ethics Programs as Viewed by Agency Ethics Officials, show that although designated agency officials, or DAEOs, identified post-employment conflicts as an important ethics problem, monitoring of compliance with post-employment restrictions tends to be limited or non-existent in many agencies.

In addition, these provisions have rarely been enforced through the courts, with few prosecutions of individuals for revolving door practices under Section 207. A 1983 report by the General Accounting Office on the Ethics in Government Act stated:

> During our current review, ethics officials at several agencies and other individuals we talked with told us that agencies have made few referrals of post-employment violations to the Department of Justice, and Justice has prosecuted few violation cases.

It is clear that lack of enforcement is a real problem.

In addition, the prohibitions described above are designed to prevent certain kinds of behavior once officials have left the government and are employed in the defense industry. They do not address, however, the crucial problem with the revolving door process. It is not only what people do after they leave government, but also what they do while in government in expectation of future employment.

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Section 208 of Title 18 attempts to deal with this problem. It prohibits government employees from negotiating for jobs with private enterprises that have a financial interest in matters in which the employees are officially participating.

Two basic problems exist with Section 208. First, as Representative Bennett (D-FL) recently pointed out, this prohibition does not apply to the conflict of interest situation where a job is clearly a possibility, even if not openly stated. A 1983 letter from the Office of Government Ethics to Representative Bennett underscores this point:

> Unilateral efforts to please or impress a contractor with whom one is dealing as a government official with an eye toward getting a job with the company are not covered by the existing criminal conflict of interest statutes.

Second, prosecutions under Section 208 have been rare. As Deputy Defense Department Inspector General Derek J. Vander Schaaf has said, "Certainly the numerous revolving door cases reported over the years have reduced confidence in the Government, but not one single case involving post-Department of Defense service has been prosecuted where the Government employees were convicted."

III. Legislative Remedies in 1985

In 1985 Congress took further steps to address revolving door problems. In the Senate, revolving door legislation was attached to a package of procurement reforms that passed 89-0 in May. Weeks later, the House overwhelmingly passed even broader revolving door legislation by a vote of 397-19.

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Yet the legislation that emerged from the conference committee on the FY1986 Defense Authorization Bill was significantly weaker than the original House language. The FY1986 Defense Authorization Act requires Pentagon employees to report job discussions with companies and prohibits political appointees who act as the primary government representative in the negotiation of contracts from accepting employment with the companies involved for two years.

The revolving door reforms adopted last year as part of the DoD authorization bill represent progress but address only the tip of the iceberg. The increased disclosure requirements are important and the passage of a two-year post-employment ban shows that Congress views this type of restriction as a legitimate tool for addressing the revolving door problem. However, the apparent application of this ban to a mere handful of people makes it ineffective against this widespread, imbedded problem.

IV. Recommendations

. Common Cause believes that revolving door legislation -- similar to the legislation passed by the House earlier this year -- should be enacted to cover the Pentagon personnel who have a substantial involvement in the procurement process -- not just presidential appointees. Legislation should be limited, however, both in time (i.e., not bar movement for lengthy periods) and scope (i.e., not include personnel who are only peripherally responsible for procurement).

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The basic approach of the House-passed proposal meets this test. At its heart is a prohibition against Pentagon personnel taking jobs for two years with those private firms for whose contracts they had significant procurement responsibility during their last two years in government. DoD Deputy Inspector General Vander Schaaf has stated that he believes, "Any 'cooling-off' period should be of reasonable length to avoid the perception of a conflict of interest. However, it should not be so long that it could be interpreted as a penalty accompanying certain types of Government service. I think two years is a reasonable period."

We believe this approach prevents government employees involved in contracting procurement from giving or appearing to give preferential treatment to a potential future employer and also provides sufficient flexibility for the movement of professionals to and from government service.

Critics of the legislation say it would excessively restrict employment opportunities for government personnel. But supporters point out that the employee would only be barred from seeking employment from the few companies with which he or she directly dealt, and then only for a limited time. Indeed, the chief executive officer of Martin Marietta, Thomas G. Pownall, told Congress in March 1985 that, "the person that we are seeking has infinite opportunity. He or she can go to work for a wide range of companies across the whole country, not only in defense but in a lot of places. They are very talented people. They are not desperate for jobs." In fact, there are approximately 600 major

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contractors and 150,000 subcontractors who deal with the Department of Defense alone.

In addition, we believe that revolving door legislation should contain tough civil penalties which apply to both the former government employee and to the defense contractor.

The failure to pursue criminal prosecution under conflict of interest laws is not limited to post-employment restrictions. There has been a similar lack of criminal prosecution under other conflict of interest laws and the existing lobby disclosure statute. With criminal penalties as the only possible sanction, there has been a resulting lack of enforcement that has, in effect, rendered the laws impotent.

This lack of criminal prosecution was also true in the campaign finance area. When the Federal Election Campaign Act was adopted, this was addressed by including civil penalties for violations in addition to criminal sanctions. The Ethics in Government Act of 1978 (except in the case of amendments to the post-employment restrictions which were already established in the criminal code) takes a slightly different tack by providing civil penalties only.

It is clear that if new revolving door restrictions are to be effective, tough civil penalties on both the employee and the contractor must be applied.

In addition, Deputy Inspector General Vander Schaaf has proposed that "The heads of executive departments and agencies should be given the authority to impose administrative penalties against former Government employees and contractual penalties

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against the companies for whom they improperly go to work during any cooling-off period." This is an important proposal that should be fully explored by the Committee.

Conclusion

Once again, Mr. Chairman, we would like to thank this Subcommittee for conducting this review of the revolving door problem and possible legislative remedies. We stand ready to work with you in any way we can.

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